ROYAL CANADIAN MOUNTED POLICE

PUBLIC COMPLAINTS COMMISSION

Royal Canadian Mounted Police Act

Part VII
Subsection 45.46(3)

Chairman's Final Report after a Public Hearing

Complainant: Kitty Nowdluk-Reynolds

March 4, 1993

File Nos.: 2000-PCC-90721
2000-PCC-90753
2000-PCC-90754
2000-PCC-90755
2000-PCC-90756
2000-PCC-90757

102-06002/

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CHAIRMAN'S FINAL REPORT AFTER A PUBLIC HEARING

I. INTRODUCTION

The Process

Under subsection 45.43(1) of the RCMP Act, the Commission Chairman, where he considers it advisable in the public interest, may institute a public hearing to inquire into a complaint whether or not it has been investigated or reported upon or dealt with by the Force. The Commission Chairman will then assign members of the Commission to conduct that hearing and those members will be considered the Commission for the purposes of the hearing. Section 45.45 of the Act sets out some of the rules governing the hearings such as that any person giving evidence at a hearing may be represented by counsel. When the hearing is completed, the Commission, that is, the members comprising the panel that conducted the hearing, will prepare an interim report setting out their findings and recommendations about the complaint and that report is sent to the Solicitor General of Canada, the RCMP Commissioner and to all parties and their counsel appearing at the hearing.

Upon receipt of the interim report, the RCMP Commissioner is required to review the complaint in light of the report's findings and recommendations. The Commissioner must then notify the Chairman of the Commission of any further action that has been or will be taken with respect to the complaint or his reasons for not acting on any of the findings or recommendations.

After considering the Commissioner's notice, the Chairman of the Commission will prepare a final report setting out such findings and recommendations with respect to the complaint as he sees fit. That report is sent to the Solicitor General of Canada, the RCMP Commissioner and to all parties and their counsel appearing at the hearing.

II. INTERIM REPORT

Interim Report and Commissioner's Notice

In the present case, the Interim Report dated November 15, 1992, setting out findings and recommendations, was sent to the Solicitor General and the Commissioner. The Commissioner gave notice of the action he would be taking in a letter to the Chairman dated January 15, 1993.

The present report is the Chairman's final report with respect to this complaint. It contains, as a background to any final findings and recommendations, the contents of the Interim Report, which includes a summary of the complaint, the Force's investigation of the

complaint, the general observations, and the interim findings and recommendations. This Final Report also includes the Commissioner's letter of January 15, 1993.

III. RCMP COMMISSIONER'S NOTICE

As stated under subsection 45.46(2) of the Act, the Commissioner forwarded the following notice to the Commission Chairman, the content thereof reads as follows:

> I acknowledge receipt of the report after public hearing of November 15, 1992, file references 2000-PCC-90721, 2000-PCC-90753/90757, 90G- 6896 and materials relevant to the complaint of Ms. Kitty Nowdluk-Reynolds.
>
> The conclusions have been examined and the following notice is provided pursuant to the Royal Canadian Mounted Police Act.
>
> I share for the most-part the findings of the Public Complaints Commission panel.
>
> With respect to complaint 2000-PCC-90721, I concur with recommendation #1. Policy will be amended to include a statement to the effect that when a subpoena is issued in another jurisdiction, instructions to the individual being served shall include the name of a person or office to contact if clarification on any issue is necessary.
>
> Regarding recommendations #2 & 3, I am of the opinion that the wording in the subpoena is clear and evident that it is a court order. It would not be practical to issue instructions that would cause members to serve subpoenas personally in all cases. However, as a community service, members should be sensitive to the public and ensure they understand what is required of them and this will be reinforced.
>
> I am satisfied that instructions contained in RCMP policy relating to "Proof of Service" are adequate. In Ms. Nowdluk-Reynolds case the serving member did complete the affidavit of service as indicated on page nine of the Commission's report.
>
> I agree with the Commission's finding that complaint 2000-PCC-90753 is unfounded.
>
> Regarding complaint 2000-PCC-90754 recommendation #1 present RCMP policy concerning the rights of an individual following arrest is clear. Steps are in place, through bulletins and amendments, to ensure all members are aware of changes on a timely basis.
>
> Recommendations #2 & 3 are being referred to the Director of Training for serious consideration.
>
> As for recommendation #1 in complaint 2000-PCC-90755, I will, as Commissioner of the RCMP, be personally reiterating my public apology already extended to Ms. Nowdluk-Reynolds.
>
> With respect to recommendation #2, in my opinion there is no need to include in policy a statement to the effect that members must not detain people in custody to suit the convenience of the RCMP. I agree that it took an unacceptably long time to escort Ms. Nowdluk-Reynolds from Surrey to Iqaluit. RCMP members must comply with the provisions of the Criminal Code and the Charter and use common sense.

I will also be extending a personal apology as recommended in complaint 2000-PCC-90756.

With respect to recommendation #2, I concur that policy should be amended to ensure the perpetrator and the victim of a crime, who are in the custody of the RCMP, are not transported together. Regarding the RCMP's obligations concerning protection of victims who are in our custody until they return home, I am of the opinion that the creation of a policy requirement is not required. Since the victim in this case was arrested under a court ordered warrant, it was not an RCMP requirement but rather a judicial system requirement. From my perspective what is under scrutiny in this instance is the insensitive performance by the member in escorting the prisoner/victim.

I share recommendation #3. Policy will be implemeneted so that whenever persons are in RCMP custody for a prolonged period they shall be permitted to attend to their hygienic needs.

I find that with respect to recommendation #4 the court and court liaison officer should attend to this responsibility.

It would be unrealistic to create policy, suggested in recommendation #5, to inform people of their right to, and/or availability of, counsel more than once if they continue in RCMP custody.

The responsibility for travel assistance belongs to the courts and crown counsel. The RCMP has no control over their policies and procedures.

I agree with the Commission's finding that complaint 2000-PCC-90757 is unsubstantiated. For this reason I find the recommendations to be collateral to the complaint and they will be taken under advisement.

With respect to the general recommendations commencing on page 48 of the report, although they have considerable merit, they too are collateral to the complaints of Ms. Nowdluk-Reynolds and will be taken under active advisement.

I would like to thank the Commission members for their advice. I look forward to receiving your final report or should you wish we could discuss this matter further.

IV. CHAIRMAN'S FINAL CONCLUSIONS AND RECOMMENDATIONS

The three-member Commission panel that conducted the hearing presented a very comprehensive Interim Report in this matter. It contains an exhaustive examination of the evidence adduced at the hearing. In their Interim Report, the Commission panel made findings and recommendations with respect to the six complaints herein. I wish, therefore, after having considered the Commissioner's Notice reproduced in Part III herein, to state my final conclusions and recommendations with respect to those complaints. I have noted the Commissioner's opening statement to the effect that, for the most-part, he shares the findings of the Public Complaints Commission panel.

Complaint No. 2000-PCC-90721

With respect to the Commission's four recommendations respecting this complaint, the Commissioner replied:

> ...
> With respect to complaint 2000-PCC-90721, I concur with recommendation #1. Policy will be amended to include a statement to the effect that when a subpoena is issued in another jurisdiction, instructions to the individual being served shall include the name of a person or office to contact if clarification on any issue is necessary.
>
> Regarding recommendations #2 & 3, I am of the opinion that the wording in the subpoena is clear and evident that it is a court order. It would not be practical to issue instructions that would cause members to serve subpoenas personally in all cases. However, as a community service, members should be sensitive to the public and ensure they understand what is required of them and this will be reinforced.
>
> I am satisfied that instructions contained in RCMP policy relating to "Proof of Service" are adequate. In Ms. Nowdluk-Reynolds case the serving member did complete the affidavit of service as indicated on page nine of the Commission's report.
> ...

I am pleased that the Commissioner will amend the Force's policy so as to reflect, in part, the first recommendation. However, I would reiterate the Commission's recommendation so as to suggest to the Commissioner that this amended policy be made applicable whenever a subpoena is being served irrespective of where it was issued.

With respect to the second and third recommendations, I agree with the Commissioner when he recognizes that, as a community service, members should be sensitive to the public by ensuring the latter's understanding of the requirements of a subpoena in the court process. The Force has always been recognized for its community service. As part of that continuing community service, I would suggest that members who are serving subpoenas be reminded of that need to explain the "nature, purpose and significance of a subpoena" to those served with the document.

With respect to the fourth recommendation, I have read Chapter III.4.E of the Force's Operational Manual pertaining to the service of a summons/subpoena. As a result, I agree with the Commissioner that this policy, which came in effect as of March 31, 1992, provides adequate guidance to members about this important task.

Complaint No. 2000-PCC-90754

With respect to the three recommendations made by the Commission, the Commissioner replied as follows:

> ...
> Regarding complaint 2000-PCC-90754 recommendation #1 present RCMP policy concerning the rights of an individual following arrest is clear. Steps are in place, through bulletins and amendments, to ensure all members are aware of changes on a timely basis.
>
> Recommendations #2 & 3 are being referred to the Director of Training for serious consideration.
> ...

I am pleased to be advised and, therefore, am satisfied that the Force is actively taking steps to keep members apprised about this rapidly evolving area of the law whether by policy amendments or by bulletins.

I am satisfied with the action indicated by the Commissioner with respect to the second and third recommendations.

Complaint No. 2000-PCC-90755

With respect to the two recommendations the Commissioner stated as follows:

> ...
> As for recommendation #1 in complaint 2000-PCC-90755, I will, as Commissioner of the RCMP, be personally reiterating my public apology already extended to Ms. Nowdluk-Reynolds.
>
> With respect to recommendation #2, in my opinion there is no need to include in policy a statement to the effect that members must not detain people in custody to suit the convenience of the RCMP. I agree that it took an unacceptably long time to escort Ms. Nowdluk-Reynolds from Surrey to Iqaluit. RCMP members must comply with the provisions of the Criminal Code and the Charter and use common sense.
> ...

With respect to the first recommendation, I am pleased that the Commissioner will be reiterating his public apology to the complainant. Apologies by members of officialdom are often viewed as statements of liability with legal implications. However, members may feel free to apologize if they are able to word it as a statement of regrets. Here the Commission also asked Constable Tetso and the Commanding Officer of "G" Division to apologize to the complainant. As volition is an intrinsic aspect of an apology, I recognize that a member cannot be forced or encouraged by a superior to make an apology. In this matter, I am of the view that the Commissioner's apology itself is appropriate.

With respect to the second recommendation, I agree with the Commissioner that no amendment to the Force policy is required about the detention of persons. The legal

requirements involving the detention of persons is an area of concern to all members. I also note that the current provisions of the Criminal Code about detention and, in particular, those provisions for the enforcement of a warrant may be somewhat confusing to readers. In light of that, I would suggest to the Commissioner that the field and recruit training programs of the Force should place a considerable emphasis on this area.

Complaint No. 2000-PCC-90756

With respect to the six recommendations, the Commissioner replied as follows:

> ...
> I will also be extending a personal apology as recommended in complaint 2000-PCC-90756.
>
> With respect to recommendation #2, I concur that policy should be amended to ensure the perpetrator and the victim of a crime, who are in the custody of the RCMP, are not transported together. Regarding the RCMP's obligations concerning protection of victims who are in our custody until they return home, I am of the opinion that the creation of a policy requirement is not required. Since the victim in this case was arrested under a court ordered warrant, it was not an RCMP requirement but rather a judicial system requirement. From my perspective what is under scrutiny in this instance is the insensitive performance by the member in escorting the prisoner/victim.
>
> I share recommendation #3. Policy will be implemented so that whenever persons are in RCMP custody for a prolonged period they shall be permitted to attend to their hygienic needs.
>
> I find that with respect to recommendation #4 the court and court liaison officer should attend to this responsibility.
>
> It would be unrealistic to create policy, suggested in recommendation #5, to inform people of their right to, and/or availability of, counsel more than once if they continue in RCMP custody.
>
> The responsibility for travel assistance belongs to the courts and crown counsel. The RCMP has no control over their policies and procedures.
> ...

With respect to the first recommendation, I am pleased that the Commissioner will be reiterating his public apology to the complainant. As discussed previously in this Final Report, I am of the view that the Commissioner's apology to the complainant would be appropriate.

I am satisfied with the Commissioner's intention to amend the Force policy so as to reflect, in part, the Commission's second and third recommendation. While I agree that the RCMP are the so-called enforcers of a court-ordered process, it is sometimes difficult to define the specific roles of the various agencies within the criminal justice system. Once a person is arrested, I consider that the police have assumed a responsibility for the care and control of that person during detention. I have, therefore, reviewed the Force's current policy, dated December 7, 1992, about Assistance to Victims of Crime. That policy reflects the

importance of victim assistance programs in the criminal justice system, whether they are police-based, court-based or community-based. This amendment to the policy about the transportation of victims who are in custody will only serve to complement the Force's overall commitment of assistance for victims of crime.

With respect to the third and fourth recommendations, I agree that the court liaison officer should be responsible for advising witnesses, whether or not they are in custody, about the status of the court proceedings.

With respect to the fifth recommendation, I am satisfied that a person who is in custody only has to be advised once that he/she may speak to legal counsel. There may be some persons who, for whatever reason, may not fully understand their right to counsel. However, the Commissioner has already referred to the sense of community service that each member has as a peace officer. As a part of the concept of community service, members should be encouraged to ensure that all persons are fully aware of their right to counsel at all stages of the legal process.

With respect to the sixth recommendation, I share the view of the Commissioner that a more coordinated approach is required for the travel arrangements for persons in custody and peace officers acting as escorts to those in custody. While I agree that courts and Crown counsel are responsible for the travel arrangements of those in custody, the Force is responsible for the travel arrangements of its members who are assigned as escorts. As a result, I would reiterate this recommendation of the Commission and suggest to the Commissioner that an ongoing liaison mechanism be established between the Force, the court and Crown counsel about such travel arrangements.

Complaint No. 2000-PCC-90757

With respect to the Commission's recommendation the Commissioner stated as follows:

> ...
> **I agree with the Commission's finding that complaint 2000-PCC-90757 is unsubstantiated. For this reason I find the recommendations to be collateral to the complaint and they will be taken under advisement.**
> ...

I am pleased that the Commissioner is taking these recommendations under advisement. Although the Commission felt that this complaint was unsubstantiated, the recommendations are relevant, not only to the timely issue of victim/witness assistance, but also to the need for a closer coordinated approach by all agencies in the criminal justice system interfacing with victims/witnesses.

I note that the Commissioner agreed with the Commission's finding that complaint No. 2000-PCC-90753 is unfounded.

General Recommendations

At the conclusion of their report, the Commission panel made eight recommendations pertaining to victims of crime within the criminal justice system. In their thought provoking preface to those recommendations, the panel members stated the following:

> Since the police have, during all stages of the process from the commission of the crime to the conviction of the accused, the greatest involvement with the victim, the opportunity for sympathetic understanding and the demonstration of sensitivity in dealing with the victim of crime rests with them. Yet what the police must do is dictated by the duties which the criminal justice system imposes upon them, including demands made by the prosecutor and authorized by the court. The Commission is of the view that it is wrong, and not in the public interest, to expose the police to the process of public complaint and make them answerable for duties which the criminal justice requires them to fulfil. The manner in which the duty is performed may properly give rise to complaint, but not the duty itself. Such being the case, the role which the police discharge in the criminal justice system must carry with it the obligation to take such action as may be required to bring about changes by which the criminal system will better serve the public interest by taking into account the interest of the victim.

With respect to these eight general recommendations, the Commissioner states the following:

> ...
> With respect to the general recommendations commencing on page 48 of the report, although they have considerable merit, they too are collateral to the complaints of Ms. Nowdluk-Reynolds and will be taken under active advisement.
> ...

I am pleased that the Commissioner is taking these recommendations under active advisement. I am of the view that these recommendations reflect timely issues pertaining to victims and that the Force may be the catalyst for stimulating consultation between the various agencies in the criminal justice system about the issues raised in the eight recommendations.

Pursuant to subsection 45.46(3) of the RCMP Act, I am submitting the Commission's Final Report on the complaints of Kitty Nowdluk-Reynolds.

Chairman

March 4, 1993

Jean-Pierre Beaulne, Q.C.
Chairman
RCMP Public Complaints Commission
P.O. Box 3423, Station "D"
Ottawa, Ontario
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APPENDIX A

ROYAL CANADIAN MOUNTED POLICE

PUBLIC COMPLAINTS COMMISSION

Royal Canadian Mounted Police Act

Part VII
Subsection 45.45(14)

Public Hearing
Into the Complaints
of
Kitty Nowdluk-Reynolds

COMMISSION REPORT

Allan Williams, Q.C.
S. Jane Evans
Lazarus Arreak

November 15, 1992

TO: THE HONOURABLE DOUGLAS G. LEWIS, P.C., SOLICITOR GENERAL OF CANADA

TO: COMMISSIONER NORMAN INKSTER, ROYAL CANADIAN MOUNTED POLICE

The undersigned were appointed on January 10, 1992 by Fernand Simard, Acting Chairman, Royal Canadian Mounted Police Public Complaints Commission, pursuant to the authority vested in him under Part VII of the Royal Canadian Mounted Police Act, to conduct a public hearing to inquire into the complaints of Kitty Nowdluk-Reynolds.

We have the honour to submit our report in accordance with subsection 45.45(14) of the Royal Canadian Mounted Police Act.

All of which is respectfully submitted,

Allan Williams, Q.C.

S. Jane Evans

Lazarus Arreak

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I. HEARING PROCESS

By Notice of Decision to Institute a Hearing and Assignment of Hearing Members dated January 10, 1992, Fernand Simard, Acting Chairman, Royal Canadian Mounted Police Public Complaints Commission, instituted hearings to inquire into six complaints of Kitty Nowdluk-Reynolds in accordance with the authority contained in subsection 45.43(1) of the Royal Canadian Mounted Police Act (the "RCMP Act"). By that Notice, Fernand Simard assigned Allan Williams, Q.C., S. Jane Evans, and Lazarus Arreak as members of the Commission to conduct the hearings in accordance with the authority contained in subsection 45.44(1) of the RCMP Act.

In the Notice of Decision, the Acting Chairman identified the following persons as parties:

- Constable J. L. Anderson, RCMP "E" Division, Surrey Detachment, British Columbia;
- Unidentified member, RCMP "G" Division, Iqaluit Detachment, Northwest Territories;
- Constable L. S. Davidson, RCMP "E" Division, Surrey Detachment, British Columbia;
- Constable P. Tetso, RCMP "G" Division, Yellowknife Detachment, Northwest Territories;
- Corporal W. J. Chisholm, RCMP "G" Division, Coral Harbour Detachment, Northwest Territories;
- Corporal G. B. Cull (retired), RCMP "E" Division, Vancouver International Airport Detachment, British Columbia.

By Order of the Commission on February 24, 1992, Constable J. O. M. Beaudoin, RCMP "G" Division, Iqaluit Detachment, Northwest Territories, was afforded the rights of a party under subsection 45.45(5) of the RCMP Act.

By Order of the Commission on March 6, 1992, Constable Carlos Gramuglia, RCMP "E" Division, Vancouver International Airport Detachment, British Columbia, was afforded the rights of a party under subsection 45.45(5) of the RCMP Act.

On January 27, 1992, the Commission issued a Notice of Hearing pursuant to subsection 45.45(2) of the RCMP Act appointing March 23, 1992 at Iqaluit, N.W.T. as the time and place of the hearing. The hearing was convened and held in public at Iqaluit, N.W.T. on March 23, 1992, and the ensuing six days. The Commission heard the testimony of 15 witnesses and received in evidence 36 exhibits including affidavit evidence and testimony taken on commission in Vancouver, B.C.

At the adjournment of the hearing at Iqaluit, N.W.T. on March 28, 1992, the Commission invited, and subsequently received, submissions from counsel on behalf of the complainant and the parties except for the appropriate officers of RCMP "G" Division and RCMP "E" Division.

Throughout the hearing, the Commission was assisted by the following counsel:

- for the Commission, N. J. Schultz and Pierre Y. Delage;
- for Kitty Nowdluk-Reynolds, Marion R. Buller;
- for Constable J. L. Anderson, G. W. Kent Scarborough;
- for Constable L. S. Davidson, James Jardine, Q.C.;
- for Constable P. Tetso and Corporal W. J. Chisholm, Richard Peach;
- for Corporal G. B. Cull (ret.), Jack Harris, Q.C.;
- for Constable J. O. M. Beaudoin, Robert Davidson;
- for Constable C. Gramuglia, James W. Williams;
- for the appropriate officer, "E" Division and the appropriate officer, "G" Division, David Gates and Nancy Irving.

The following witnesses were also represented by counsel:

- for David McWhinnie, Virginia Schuler, Q.C.;
- for Betty Smith, Rose Raven;
- for Staff Sergeant Creighton, G. Malakoe;

- for Corporal P. Juby, Jack Harris, Q.C.;

- for Inspector M. W. C. Harrower, Staff Sergeant J. C. Howie and Corporal J. Coldham, David Gates and Nancy Irving.

The Commission acknowledges the support services of:

- Susan Hutton, Clerk/Registrar
- Kim Stewart, Official Reporter

The Commission wishes to express its appreciation for the assistance provided by the staff of the Territorial Court at Iqaluit, N.W.T.

II. PROCEEDINGS PRIOR TO THE DECISION TO INSTITUTE A HEARING

During the period from mid-September to mid-October, 1990, critical comment and expressions of concern about the several incidents involving Kitty Nowdluk-Reynolds and members of the RCMP, which form the basis of the complaints referred to in this report, appeared in news reports published in British Columbia and the Northwest Territories. As well, M. J. Sillett, the president of the Inuit Women's Association, wrote to the RCMP at Surrey, B.C. and Iqaluit, N.W.T. requesting a response to allegations of ill treatment sustained by Kitty Nowdluk-Reynolds while involved with members of the RCMP. Copies of these letters were also sent to the Director, Aboriginal Policing Services, RCMP, Ottawa. As a result, both the Inuit Women's Association and Kitty Nowdluk-Reynolds were advised by letter of November 2, 1990 that the RCMP had undertaken an investigation in British Columbia and the Northwest Territories of the incidents giving rise to the allegations.

During this same period, Ms. Kitty Nowdluk-Reynolds expressed her concerns about these incidents to the RCMP Public Complaints Commission by letter dated October 23, 1990. By a letter of the same date, the complainant brought these concerns to the attention of the Honourable Kim Campbell, P.C., the Minister of Justice for Canada. As a consequence of the letter to the Commission, Kitty Nowdluk-Reynolds attended at the regional office of the Commission in Vancouver, B.C. and supplied detailed particulars of her complaints. On November 26, 1990, pursuant to subsection 45.35(1) of the RCMP Act, six complaints were sent by the Commission to RCMP "E" Division concerning the conduct of members of the RCMP "E" Division and "G" Division in the course of incidents in which Kitty Nowdluk-Reynolds was involved between June 7, 1990 and September 6, 1990.

The complaints are set out in Part IV of this report.

In accordance with Part VII of the RCMP Act:

1. investigations into the complaints were undertaken by both "G" Division RCMP and "E" Division RCMP;

2. on February 21, 1991, Inspector E. G. Dennis, RCMP "G" Division, sent a report to Kitty Nowdluk-Reynolds with respect to the complaints about the conduct of members of RCMP "G" Division (see Appendix "A");

3. on March 4, 1991, Superintendent W. L. Ring, RCMP "E" Division, sent a report to Kitty Nowdluk-Reynolds with respect to the complaints about the conduct of members of RCMP "E" Division (see Appendix "B");

4. on March 30, 1991, Kitty Nowdluk-Reynolds advised the Commission, pursuant to subsection 45.41(1), that she was not satisfied with the disposition by the RCMP of her complaints in respect of members of RCMP "E" Division and referred the complaints to the Commission for review;

5. on January 7, 1992, Kitty Nowdluk-Reynolds confirmed to the Commission in writing that she was not satisfied with the disposition by the RCMP of her complaints in respect of members of RCMP "G" Division and referred the matter to the Commission for review;

6. Fernand Simard, the Acting Chairman of the Commission, pursuant to subsection 45.42(3)(c) of the RCMP Act, reviewed the complaints and caused further investigation to be conducted by the Commission;

7. following further investigation, the Acting Chairman, pursuant to subsection 45.43(1), considered it advisable, in the public interest, to institute a hearing to inquire into the complaints;

8. on January 10, 1992, the Acting Chairman, pursuant to subsection 45.44(1), issued a Notice of Decision to Institute a Hearing.

III. NARRATIVE BACKGROUND TO THE COMPLAINTS

Each of the complaints particularized in Part IV arises from incidents in which Kitty Nowdluk-Reynolds was personally and directly involved with one or more members of the RCMP who, in each instance, were carrying out a duty imposed upon them by the criminal justice system of Canada. These incidents, while interconnected, are episodic and capable of being considered separately. However, the Commission is of the view that the report of its inquiry will better contribute to the public interest if these incidents are seen in the complete narrative which their relationship produces.

The Commission appreciates that, as is often the case in such proceedings, the testimony of witnesses based upon their recollection of events in which they were involved may give rise to discrepancies and conflict with the testimony of others who were involved in the same events. The Commission also accepts that, over time, a witness' power of recollection may diminish or, contrariwise, events may occur which serve to clarify and improve a witness' recollection. As a consequence, the Commission acknowledges that testimony given at the hearing may, with justification, differ from statements made at some earlier time. As well, however, the Commission is aware that the investigations which preceded the hearing created the opportunity for reflection upon events which served to rehearse and encourage improvement or embellishment on the recollection of those events. The Commission has taken all of these factors into account in weighing the testimony of witnesses and reconciling discrepancies in the testimony as well as conflicts with documentary evidence produced at the hearing. The following narrative of events shall be the finding of facts relevant to this inquiry accepted by the Commission. To the extent that the discrepancies in testimony and conflicts in evidence are pertinent to the inquiry, an analysis will be made in the review of the individual complaints in Part IV.

FINDING NO. 1: NARRATIVE EVENTS

The complainant, Kitty Nowdluk-Reynolds, is an Inuk, aged 26 at the time of the hearing. Born in Iqaluit, Northwest Territories, she had, until June 7, 1990, lived in that community except for approximately five years during which she resided in Ontario and British Columbia with her husband.

At approximately midnight on June 7, 1990 at Iqaluit, N.W.T., the complainant was raped and viciously beaten by Inusiq Shoo. The violent sexual assault was stopped by the intercession of William Sevigny who responded to the complainant's calls for help. William Sevigny escorted Kitty Nowdluk-Reynolds to the Baffin Regional Hospital where she was examined and treated for injuries sustained in the attack. She was admitted overnight and

discharged later that day. While in the hospital, the complainant was visited by Corporal N. Butts and Constable J. O. M. Beaudoin of RCMP Detachment Iqaluit who took a photograph of the complainant and to whom the complainant gave an oral account of the attack. The attending officers formed the opinion that she was too emotionally upset to withstand any extended interview and deferred taking a written statement from her at that time.

Within an hour of the attack on the complainant, Inusiq Shoo surrendered himself to Corporal N. Butts at RCMP Detachment Iqaluit. He was arrested and charged with aggravated sexual assault under section 273 of the Criminal Code and, after being warned, made several incriminating statements concerning his attack on Kitty Nowdluk-Reynolds. Subsequently, while in cells, he refused to give any further statement.

On June 13, 1990, in furtherance of plans which she had made prior to the sexual assault, Kitty Nowdluk-Reynolds left Iqaluit, flew to Ottawa where she joined her common-law husband, Robert Callaghan, and travelled with him to take up residence in Surrey, British Columbia.

Constable J. O. M. Beaudoin, the investigating officer, attempted on June 16, 1990 to communicate with Kitty Nowdluk-Reynolds by telephone at her home in Iqaluit in order to arrange a meeting for the purpose of taking a written statement concerning the assault and obtaining authority for access to medical records of her examination at Baffin Regional Hospital. He was advised that she was not at that residence. On June 18, 1990 he learned that the complainant had left Iqaluit and had taken up residence at the Timberland Motel in Surrey, British Columbia. He telephoned the office of the motel and left a message for Kitty Nowdluk-Reynolds to call him. Telephone records confirm this call and also disclose that a collect telephone call was received at RCMP Detachment Iqaluit on June 19, 1990 from a pay phone at the Timberland Motel. Records at RCMP Detachment Iqaluit show that a call on this day was received by a civilian employee, but there is no record of any message from, or any identification of, the person who made the telephone call.

On June 26, 1990, Constable J. O. M. Beaudoin requested RCMP Detachment Surrey to obtain a statement from the complainant and an authorization for release of medical information. This written request was directed to a "reader" at the Surrey Detachment, not an investigator, and was diarized for one month. The request did not resurface until August 9, 1990, on which day it was assigned to Corporal P. Juby, a member of the Serious Crime Unit at RCMP Detachment Surrey. Also on June 26, 1990, RCMP Detachment Iqaluit advised the crown counsel having charge of the prosecution of Inusiq Shoo of the British Columbia address of Kitty Nowdluk-Reynolds.

By late June, 1990, Inusiq Shoo had elected to be tried in the Territorial Supreme Court, and a preliminary inquiry had been scheduled for July 27, 1990 at Iqaluit. The crown counsel

initiated the process to obtain a subpoena requiring Kitty Nowdluk-Reynolds to appear as a material witness at the preliminary inquiry. The subpoena was issued, with leave of a Territorial Supreme Court Judge, on July 3, 1990 on the application of the Yellowknife Regional Office of the Territorial Department of Justice and sent to the RCMP Detachment Surrey under cover of a letter from the Department of Justice, N.W.T. dated June 29, 1990. The letter requested service of the subpoena on Kitty Nowdluk-Reynolds and return of the affidavit of service to the Department of Justice sub-office at Iqaluit. This material was delivered by Priority Post to RCMP Detachment Surrey on July 5, 1990.

Evidence introduced at the hearing disclosed that it is the practice of the Department of Justice of the Northwest Territories, in matters of this nature, to send with the subpoena a letter of instructions addressed to the witness which provides a telephone number which the witness is requested to call prior to travelling to court in order that the witness may ascertain if attendance in response to the subpoena is still required. The letter also contains instructions to the witness by which assistance may be obtained in making travel arrangements. A copy of such a letter of instructions was found in the file of the Department of Justice at Yellowknife but there is no record of such a letter being received by RCMP Detachment Surrey, and the letter to RCMP Detachment Surrey requesting service of the subpoena on the complainant makes no reference to either the service or delivery of a letter of instructions to the witness. No such letter was received by Kitty Nowdluk-Reynolds.

On July 10, 1990, Constable J. L. Anderson of RCMP Detachment Surrey was detailed for duty for the service of subpoenas and other court documents. This had been part of Constable Anderson's regular duty since April 12, 1990. When Constable Anderson reported for duty on the morning of July 10, 1990, she received, as was usual, approximately 30 sets of documents to be served, including the copies of the subpoena sent from Yellowknife for service on Kitty Nowdluk-Reynolds. In accordance with detachment practice, there was attached to the copies of the subpoena for service on the complainant an internal document called a criminal process record containing information about the document to be served and providing space for a record to be made of particulars of service. Constable Anderson did not receive any other document or letter for delivery to the complainant.

Constable Anderson went to the Timberland Motel in Surrey, B.C. at approximately 4:30 p.m. on July 10, 1990. She went to the office of the motel and learned that the complainant resided in Unit No. 2. Constable Anderson was in uniform and, with the subpoena documents in her hand, she knocked on the door of the motel unit. The door was opened by a person who, in response to Constable Anderson's question, identified herself as Kitty Nowdluk-Reynolds. Constable Anderson identified herself and advised the complainant that she had a subpoena to serve on her. As was her regular practice when serving subpoenas, she read aloud, with Kitty Nowdluk-Reynolds reading along with her, the contents of the

subpoena which required her to attend at the Territorial Supreme Court in Iqaluit, N.W.T. on July 27, 1990. Constable Anderson asked the complainant if she understood and advised her to call RCMP Detachment Iqaluit if she had any questions. The Constable then removed the criminal process record from the document and handed the subpoena to Kitty Nowdluk-Reynolds. There was a male person present in the motel unit with the complainant during this time whom Constable Anderson did not identify. After serving the subpoena, Constable Anderson left the motel unit and went to her vehicle where she completed the Criminal Process Record and the affidavit of service form on her copy of the subpoena. She later completed a form letter used by the RCMP to confirm service of the document and transmit a copy of the subpoena and the attached affidavit of service which she had signed. These documents were left with the person in RCMP Detachment Surrey responsible for mailing.

Following the service of the subpoena on Kitty Nowdluk-Reynolds by Constable Anderson on July 10, 1990, Kitty Nowdluk-Reynolds placed the subpoena document in a table or desk drawer at the motel unit. The complainant took no action to comply with the subpoena, and she was not represented in court at Iqaluit, N.W.T. on July 27, 1990. Neither the complainant nor any person on her behalf made any inquiry of RCMP Detachment Iqaluit or of crown counsel at Iqaluit or Yellowknife concerning travel and other arrangements which would assist her to comply with the subpoena. No such arrangements were offered to her by any member of the RCMP or official of the Territorial Department of Justice.

[Testimony given by Kitty Nowdluk-Reynolds and Robert Callaghan as to events which occurred shortly after the service of the subpoena on July 10, 1990 concerning a telephone call to RCMP Detachment Iqaluit with respect to compliance with the subpoena is in direct conflict with other testimony and documentary evidence presented at the hearing. These evidentiary discrepancies are detailed in Part IV (B).]

The Commission considers it noteworthy that the request from RCMP Detachment Iqaluit to RCMP Detachment Surrey on June 26, 1990 to obtain a statement from Kitty Nowdluk-Reynolds, having been diarized for one month and then being assigned to Corporal P. Juby on August 9, 1990, was not acted upon until after the complainant had failed to appear at Iqaluit on July 27, 1990 in response to the subpoena. It is also noteworthy that on August 9, 1990, when Corporal Juby spoke to the complainant by telephone, he was unaware that a subpoena had been issued and served by RCMP Detachment Surrey, that the subpoena had been ignored, and that a warrant for the arrest of Kitty Nowdluk-Reynolds had been issued. He made no inquiry to determine what may have transpired since June 26, 1990. In ignorance of these intervening events, Corporal P. Juby spoke at length with the complainant on the telephone in an attempt to arrange an interview with her for the purpose of obtaining a statement concerning the sexual assault. During the course of that conversation, he formed the opinion that the complainant was resolute in her refusal to cooperate with the RCMP in the investigation and unwilling to return to Iqaluit for any court proceeding, in spite of his

concerted efforts to convince her of the need for her cooperation and the possibility that her attacker might be acquitted of the charge. Once satisfied that the complainant would not provide a statement, Corporal Juby reported to RCMP Detachment Iqaluit that he had been unsuccessful in obtaining a statement and expressed his view that Kitty Nowdluk-Reynolds was a hostile witness and would be unlikely to appear at a trial of the charge unless she were arrested. Although Corporal Juby expressed these views to his fellow officer, in his conversation with Kitty Nowdluk-Reynolds he gave no indication that her involvement in the prosecution of the charge against Inusiq Shoo might be anything other than voluntary, or that she might be compelled to testify.

During this conversation, Kitty Nowdluk-Reynolds made no reference to the service of the subpoena or to any suggestion that it was unnecessary for her to attend in Iqaluit as alleged in her complaint referred to Part IV (B) of this report.

The Commission notes that Corporal Juby's duties involved the investigation of sexual assault incidents, that he was experienced in interviewing victims who were reluctant to become involved in the judicial process, and that he was aware of the emotional distress which such victims endured.

The preliminary hearing of the charges of grievous sexual assault brought against Inusiq Shoo came on for hearing in the Territorial Court of the Northwest Territories at Iqaluit on July 27, 1990. At the commencement of those proceedings, crown counsel advised the court that a subpoena had been served on Kitty Nowdluk-Reynolds requiring her to be present, and that Constable J. O. M. Beaudoin had, on July 26, 1990, unsuccessfully attempted to communicate with her by telephone at her residence to confirm her appearance. The court was also informed that Constable Beaudoin had inquired at the residence of the complainant's relatives in Iqaluit and was unable to ascertain if she was in Iqaluit or was expected to return there. As a consequence, the court ordered the issuance of a warrant for the arrest of Kitty Nowdluk-Reynolds as a material witness. Subsection 704(1) of the Criminal Code provides for the issuance of the warrant in a form capable of execution anywhere in Canada. Notwithstanding this, it is the practice in the Northwest Territories to restrict such warrants to execution in the Territories and, to facilitate the execution of this warrant on the complainant in British Columbia, steps were taken by crown counsel to extend the scope of the warrant. On August 3, 1990 crown counsel confirmed the issuance of the Territorial warrant to RCMP Detachment Iqaluit and gave instructions that all efforts be made to execute the warrant and deliver Kitty Nowdluk-Reynolds to the court in custody on September 4, 1990, which was the date crown counsel advised was set for the resumption of the preliminary inquiry. RCMP Detachment Iqaluit, in accordance with RCMP "G" Division policy, obtained authority for the execution of the warrant outside the Northwest Territories on August 22, 1990. Hence it was not until August 23, 1990, that the RCMP Detachment Iqaluit requested RCMP Detachment Surrey to arrest the complainant. A

member of RCMP Detachment Surrey attempted to execute the warrant on the complainant on August 23, 1990, but was unable to do so because she was not at home.

On August 27, 1990, RCMP Detachment Iqaluit reiterated its request for the execution of the warrant, and on the following day Constable L. S. Davidson went to Unit No. 2 of the Timberland Motel at approximately 12:45 p.m. for that purpose. Constable Davidson knocked on the door of the motel unit. It was answered by a man. Constable Davidson identified himself and asked for Kitty Nowdluk-Reynolds. On being advised that she was there, the Constable stepped in the doorway and saw a woman seated on a sofa-bed whom he identified as Kitty Nowdluk-Reynolds. Constable Davidson also identified the man who had answered the door as Robert Callaghan. He then spoke to Kitty Nowdluk-Reynolds, told her that she was under arrest for failure to appear at Iqaluit in response to a subpoena, and read to her the Charter rights and the legal warning from a card which he used for that purpose, as follows:

> It is my duty to inform you that you have the right to retain and instruct counsel without delay. You are not obliged to say anything, but anything you do say may be given in evidence.

He informed her that she would be taken back to Iqaluit to testify in the proceedings against Inusiq Shoo. Constable Davidson did not ask the complainant if she understood her Charter rights nor did he repeat or reinforce them at any time. At this juncture the complainant became extremely upset and began venting her anger, as displayed by her movements and language. Constable Davidson, at this time inside the motel room, moved to a position from which he believed he could exercise control over the situation if such action became necessary. He attempted, by words, to calm the complainant, but he was uncertain how much of what he was saying she properly comprehended. He was, nonetheless, satisfied that she was aware she had been placed under arrest and was going to be taken to Iqaluit.

Constable Davidson then told the complainant to pack such belongings as she would need for her trip to Iqaluit, and he appealed to Robert Callaghan to assist him in calming the complainant. Kitty Nowdluk-Reynolds was, at this period, moving agitatedly about the room, yelling, swearing, and crying. The complainant announced that she intended to use the washroom, and Constable Davidson moved across the room and stopped her from doing so until he had examined the interior of the washroom, the drawer in the vanity table, and the window in the bathroom. He then permitted the complainant to go into the washroom, but he kept the door ajar and placed himself so that he could observe the bathroom window to ensure that Kitty Nowdluk-Reynolds could not use it to escape from arrest. From his vantage point he could see the window but was not able to see the complainant.

When leaving the washroom, Kitty Nowdluk-Reynolds, who was still extremely agitated, brushed against Constable Davidson as she moved past him and gave him a backhand "swat." The Commission concludes that this incident was not an assault on Constable Davidson. At most it was, as he characterized it, the complainant striking out against the uniform, not against him.

Kitty Nowdluk-Reynolds, with the assistance of Robert Callaghan, assembled her personal belongings, and Constable Davidson informed her that he would have to put her in handcuffs. He did this in such a manner that her hands were in front of her body and a jacket was placed over them so they would be hidden. The Constable then walked with her to his car, holding her elbow, and assisted her so that she would not fall.

Having placed Kitty Nowdluk-Reynolds in the vehicle, Constable Davidson made notes in his notebook and recorded that the time was 12:52 p.m. The entire period involved in the arrest procedure was approximately ten minutes. He left the motel at 1:04 p.m. and drove to RCMP Detachment Surrey where the complainant was booked into the cells at 1:20 p.m. Following this procedure, Constable Davidson escorted the complainant to the cells.

Prior to his visit to the Timberland Motel for the purpose of executing the warrant, Constable Davidson had been briefed by Corporal P. Juby about his involvement with Kitty Nowdluk-Reynolds and had been informed that the complainant was the victim of a sexual assault and was unwilling to return to Iqaluit to participate as a witness in the prosecution of the charge. With this information and his observation of the behaviour of Kitty Nowdluk-Reynolds during the arresting process, Constable Davidson concluded that she had not had any counselling following the sexual assault. In light of the anger and extreme emotional response displayed by the complainant and the apparent lack of counselling, Constable Davidson sought the assistance of Betty Smith, a trained social worker, who had seven years experience as a volunteer member of the victim assistance program operated by RCMP Detachment Surrey. He informed Betty Smith that Kitty Nowdluk-Reynolds was an Inuk who was the victim of a sexual assault and was required to appear in court in Iqaluit as a material witness in the charge against her attacker. He further informed Betty Smith that the complainant had failed to respond to a subpoena and had been arrested and would be taken in custody to Iqaluit. Constable Davidson told Betty Smith that he was concerned that Kitty Nowdluk-Reynolds did not understand what was taking place and that he did not feel that he was able to make her understand what was expected of her.

Constable Davidson took Betty Smith to the cell area and introduced her to Kitty Nowdluk-Reynolds. This was a novel experience for Betty Smith because, except for a familiarization tour, she had never been in the cell area and had never had occasion to meet a victim of a crime in such a setting.

Betty Smith's initial attempts to communicate with Kitty Nowdluk-Reynolds were difficult and without success. She found that the complainant was extremely upset, angry, and frightened. She found her to be distraught to such a degree that she was either not listening or was unable to understand what was being said to her. Betty Smith concluded that the complainant's distress stemmed from the fact that she was angry and did not understand why she, the victim of a crime, had been arrested and was being forced to return to Iqaluit to confront the person who had raped her. She was also extremely concerned about the prejudice which she felt the police had against Inuit people. Betty Smith concluded, after roughly 10 minutes of effort, that she was not successfully communicating with Kitty Nowdluk-Reynolds. She therefore sought the assistance of Mr. L. Mortimer who was the supervising guard in the cells area. Mr. Mortimer proved to be a person with great experience in dealing with similar situations and was able to calm down Kitty Nowdluk-Reynolds to a sufficient degree to allow the three of them to talk about the circumstances in which the complainant found herself and what would happen in the immediate future. Mr. Mortimer and Betty Smith were able to explain to Kitty Nowdluk-Reynolds that she had to go to Iqaluit, explained the nature of the court process in which she was involved, and advised her that she could have a lawyer to represent her. As a result of these efforts Kitty Nowdluk-Reynolds began to listen to what she was being told and eventually to appreciate what was taking place, and she appeared to accept that she must return to Iqaluit even though it meant facing the rapist. The interview process consumed approximately one hour. At its conclusion, satisfied that the complainant had had no counselling, Betty Smith offered to assist her in obtaining counselling services once Kitty Nowdluk-Reynolds returned from Iqaluit. Betty Smith did speak to Kitty Nowdluk-Reynolds sometime after the middle of September, 1990, but by that time the complainant had communicated with both Rape Relief and Women Against Violence Against Women and declined Betty Smith's offer of further referrals.

Notwithstanding the assessment made by Betty Smith of Kitty Nowdluk-Reynolds' condition and attitude at the end of the interview, the Commission accepts the testimony of the complainant that she continued to be in a state of shock and for that reason made no request to consult a lawyer. Betty Smith and Les Mortimer assured her that she would have the opportunity to consult with a lawyer the next day before going to court. No further advice was offered to the complainant by any member of the RCMP regarding representation by a lawyer.

Kitty Nowdluk-Reynolds remained in the cell at RCMP Detachment Surrey overnight and in the morning of August 29, 1990 was taken in handcuffs to the courthouse in Cloverdale, British Columbia. When she arrived at the courthouse she received some clothing, personal effects, and a letter from Robert Callaghan. Some time later in the morning she was taken to see a lawyer whom she understood to be the duty counsel at the courthouse. The duty counsel interviewed Kitty Nowdluk-Reynolds for approximately 20 minutes and then left,

saying that she would look into what had happened and would see what could be done for the complainant. The complainant never again saw this duty counsel or any other lawyer.

Later on that morning, Kitty Nowdluk-Reynolds was taken before a justice of the peace in the courthouse at Cloverdale, B.C. who remanded her in custody to Lakeside Correctional Centre. At this stage the complainant had not received a copy of the warrant for her arrest. Such a copy was not seen by her until she attended at the office of the Commission in October, 1990.

The complainant was escorted to Lakeside Correctional Centre where she was strip-searched, given a de-lousing bath, photographed, fingerprinted, provided with a prison uniform, and taken to a cell shared with other women prisoners. She was asked by prison officials if she was prepared to do work in the prison laundry and when she indicated her willingness to do so, she was transferred to a smaller cell with one cellmate who was also an aboriginal woman. Kitty Nowdluk-Reynolds spent the balance of August 29 and all of August 30 and 31 and September 1, 1990 as a prisoner in Lakeside Correctional Centre. During that time she worked three days in the prison laundry for which she was paid $3 per day in cash upon being discharged.

During the four and one half days and nights that Kitty Nowdluk-Reynolds was imprisoned at RCMP Detachment Surrey and in Lakeside Correctional Centre, she received no visitors and was provided with no explanation of her circumstances or what future action she might expect beyond that given to her by victims' services personnel at the RCMP Detachment Surrey. Robert Callaghan attempted to visit her in Lakeside Correctional Centre but was refused since he could not establish a family relationship.

Following the arrest of Kitty Nowdluk-Reynolds by Constable Davidson, RCMP Detachment Iqaluit was advised of the execution of the warrant. Procedures were then initiated for the transportation of Kitty Nowdluk-Reynolds in custody to Iqaluit, and a request for that service was made to the provost section of the RCMP at Yellowknife. As a result, Constable P. Tetso was detailed for this escort duty. She travelled from Yellowknife to Vancouver on September 1, 1990. On the morning of September 2, 1990, she went to the Burnaby Detachment RCMP, which provided transport to Lakeside Correctional Centre where she took Kitty Nowdluk-Reynolds into custody, placed her in handcuffs, and took her to Vancouver International Airport. The complainant was kept in handcuffs while at the airport terminal awaiting the departure of the flight to Yellowknife. During the first leg of the flight from Vancouver to Edmonton, the complainant was handcuffed except when she visited the washroom. On arrival at Edmonton she was placed in the RCMP detachment cell at the Edmonton International Airport until the flight left for Yellowknife. While walking in the airport terminal at Edmonton she was handcuffed and suffered the embarrassment of meeting her cousin who was travelling with his soccer team. The flight from Edmonton to

Yellowknife was approximately two hours in duration and, except while eating a meal, she was handcuffed on one or both wrists. Upon arrival in Yellowknife, Kitty Nowdluk-Reynolds remained in handcuffs in the terminal until transportation was arranged to take her and Constable Tetso to RCMP Detachment Yellowknife where she was booked into cells. This occurred at approximately 9:30 p.m. on September 2, 1990 at which time Constable Tetso advised the complainant that she would escort her on an early morning flight from Yellowknife to Iqaluit. While in the cells at Yellowknife, Kitty Nowdluk-Reynolds asked Constable Tetso and the matron if she could have a shower, but no arrangements were made. Because of her emotional state and the disturbance caused by male prisoners in the adjacent cells, Kitty Nowdluk-Reynolds was unable to eat the meal provided for her and spent a fitful, sleepless night.

It was planned to resume the escort of Kitty Nowdluk-Reynolds to Iqaluit on September 3, 1990 by a direct flight leaving Yellowknife at 9 a.m. Constable Tetso had advised the complainant that she would be taken to the airport at 8:30 a.m. The complainant made herself ready for that departure but Constable Tetso overslept and did not come to the detachment office until after the flight had departed. No apology or explanation was offered for this incident.

As a consequence, the complainant remained in custody in Yellowknife while alternate arrangements were made. Constable C. Journeay was detailed to escort her to Iqaluit on flights from Yellowknife to Edmonton to Toronto and to Ottawa on September 3, 1990, and to Iqaluit on the morning of September 4, 1990. While under escort by Constable Journeay, the complainant was not kept in handcuffs. Upon arrival at Ottawa, there was no cell at the airport to accommodate the complainant and she was therefore transported to the Ottawa city jail where she was booked in overnight. Early on September 4, 1990, Kitty Nowdluk-Reynolds and Constable Journeay flew from Ottawa to Iqaluit where they arrived at approximately 1 p.m. On arrival, the complainant was taken to RCMP Detachment Iqaluit and booked into a cell.

Once she was booked into the cell, the complainant requested that she be allowed to have a shower as she had not had the opportunity since leaving Lakeside Correctional Centre on September 2, 1990. She was told that there was insufficient time for her to shower before her scheduled appearance in court and that she would only have time to change her clothes.

At this juncture, Constable W. J. Chisholm (since promoted to the rank of Corporal), who was detailed for court liaison duties at RCMP Detachment Iqaluit, came to the cell and took custody of the complainant for the purposes of transporting her to the courthouse. At that time of day there were four other RCMP members on duty, but none were in the detachment office and Corporal Chisholm made no attempt to contact them to see if any of them were available for escort duty. Corporal Chisholm took Kitty Nowdluk-Reynolds to a waiting

RCMP Suburban vehicle and placed her, in handcuffs, with Florence Power, a civilian matron, in the rear bench seat in the cab of the vehicle. Corporal Chisholm and a male guard occupied the front seat in the cab of the vehicle. The seat occupied by the complainant and the matron was separated from the rear part of the vehicle by a wire mesh and plexiglas shield. The rear portion of the vehicle was equipped to accommodate other passengers.

Kitty Nowdluk-Reynolds expected that she would be driven directly to the courthouse. It was the evidence of Corporal Chisholm that before leaving the detachment he advised the complainant that they would travel first to the Baffin Correctional Centre where they would pick up additional prisoners who were scheduled for appearance in court, including Inusiq Shoo. Corporal Chisholm testified that the complainant appeared indifferent to these arrangements and that, at the Baffin Correctional Centre, he instructed Inusiq Shoo that he was not to speak to the complainant or attract her attention in any way. Kitty Nowdluk-Reynolds denies that she was informed of these travel arrangements and testified that she was shocked to find her attacker in the same vehicle.

The Commission finds no conclusive evidence to resolve this conflict in the testimony of the complainant and Corporal Chisholm but considers this conflict to be of little consequence to the inquiry into the complaint arising from the incident. Whether she was told or not, she was subjected to a confrontation with her assailant because of the transport arrangements, without regard for the impact this would have on her.

At Baffin Correctional Centre, the prisoners, including Inusiq Shoo, were placed in the rear portion of the vehicle. At that moment, the complainant expressed surprise, shock, and anger at her attacker being in the same vehicle, and she directed a number of remarks to Inusiq Shoo, including, "How come you're not dead yet? I thought rapists were beat up or killed in jail." Corporal Chisholm told the complainant to ignore the prisoner and face the front. He then drove directly to the courthouse in Iqaluit, a matter of a few miles.

Upon arrival at the courthouse, Corporal Chisholm took Matron Florence Power and Kitty Nowdluk-Reynolds into the building. It was the usual practice for female prisoners to be placed in one of the small interview rooms, but on this occasion Corporal Chisholm made arrangements for Kitty Nowdluk-Reynolds to wait in the Tuvvik Centre, an unofficial drop-in centre immediately adjacent to the courtroom, which is used for drug and alcohol counselling purposes. Corporal Chisholm felt that the atmosphere in Tuvvik Centre would be more relaxing and that the complainant would have the opportunity to have a cup of coffee while waiting for her appearance in court.

While at the Tuvvik Centre, the complainant met William Sevigny, the man who had come to her assistance during the attack and taken her to the hospital on June 7, 1990. She also

telephoned her mother and her sister, both of whom live in Iqaluit. During this period she was interviewed for about 10 minutes by crown counsel, Alison Crowe, concerning the evidence that she would give. It was the complainant's understanding that she would be testifying at a trial and that, once her testimony was complete, she would be allowed to go to her mother's home.

When the proceedings against Inusiq Shoo were about to commence, Kitty Nowdluk-Reynolds and the matron were taken to the courtroom. The complainant sat at the back of the courtroom for about 30 minutes while procedural matters pertaining to the proceedings were discussed among the judge, crown counsel, and defence counsel. The transcript of the court proceedings discloses that there was some confusion as to whether September 4, 1990 was the date that had been set for the preliminary hearing. The discussion centred upon whether or not the court schedule would permit the hearing to proceed on September 4 or whether a postponement for as much as a few weeks would be required. Even though she was charged with an offence and was brought to court in custody, Kitty Nowdluk-Reynolds was not represented by counsel, and neither the judge, crown counsel, defence counsel, nor Corporal Chisholm, the RCMP court liaison officer in whose custody she remained, took any steps to rectify this situation or inquired of the complainant if she wished her interests to be represented. The records of the court proceedings on that day, introduced in evidence at the hearing, disclose that there were other counsel present in the courtroom at the time who could have represented Kitty Nowdluk-Reynolds if requested by her or assigned by the judge. The complainant was never informed of their availability.

In the course of these discussions, an application was made by the defence for a two-day adjournment of the hearing, and crown counsel informed the judge that Kitty Nowdluk-Reynolds was present in court, under arrest, and would only be released following the giving of her testimony. The court suggested that the complainant could be released that day and asked crown counsel to inquire whether or not Kitty Nowdluk-Reynolds could be available to testify on September 5, 1990, in which case the judge indicated she would adjourn the proceedings for one day. The court was then adjourned to enable crown counsel to discuss the matter further with the complainant. As soon as the judge left the courtroom, Kitty Nowdluk-Reynolds erupted in an emotional and angry outburst. She referred to the proceedings as a "kangaroo court." She yelled and screamed at Inusiq Shoo, telling him that he should kill himself. She was eventually taken from the courtroom to one of the interview rooms in the courthouse with the police matron, and efforts were made to calm her down. During this time she was visited by crown counsel, who appeared not to understand why the complainant was so upset. After about 30 minutes, an RCMP member escorted the complainant to an RCMP vehicle and returned her to the cells at RCMP Detachment Iqaluit. The complainant inquired of the police officer why she was not being released, indicating that she believed that she was to be allowed to go home. The officer advised her that she was going back to jail, but that someone would come and tell her later what was going on.

At this time crown counsel returned to the courtroom and, with counsel for the defence, advised the judge that it had been agreed to adjourn the matter until the morning of September 5, 1990. The judge indicated that this would be a busy time and inquired if the complainant would be required on that occasion. The judge also inquired if the complainant would be staying in a hotel and was advised by crown counsel that the Crown would not seek her release from custody. In response to a question by the judge, crown counsel indicated that she was aware that the complainant would remain in cells at the RCMP detachment. She indicated that she was not prepared at that time to seek her release but submitted that the evidence to be given by the complainant would be short and could be dealt with at the beginning of the proceedings on the next day. As a result of the submissions, the judge ordered that Kitty Nowdluk-Reynolds be brought to court at 1:30 the following afternoon, until which time she would be detained in custody.

Kitty Nowdluk-Reynolds was never informed of these proceedings and was never again interviewed by crown counsel.

When the complainant was returned to the cells at RCMP Detachment Iqaluit, she again requested that she be allowed to have a shower but was told that there were no personnel available to take her to the showers. The police matron gave her some shampoo and a cloth and told her that she could have a sponge bath at the small sink in the cell.

Thus ended the events of September 4, 1990 for Kitty Nowdluk-Reynolds. Virtually incommunicado, she spent the night in her cell. No one from RCMP Detachment Iqaluit informed her what had transpired in court on that day or what arrangements had been made for her on the following day.

On the morning of September 5, 1990, Kitty Nowdluk-Reynolds made herself ready to appear in court as a witness in the trial of Inusiq Shoo. She was apprehensive about the procedure and fearful of confronting Inusiq Shoo's counsel and of again facing her attacker. She waited in her cell through the entire morning, not knowing that at approximately 11 a.m. Inusiq Shoo had appeared before the judge, waived his right to a preliminary hearing, and been committed to stand trial in the Supreme Court of the Northwest Territories at a date to be determined. As a consequence of these proceedings, the court ordered the release of Kitty Nowdluk-Reynolds and the withdrawal of the charge against her arising from her failure to respond to the subpoena. Kitty Nowdluk-Reynolds was never informed of these proceedings, and was never advised of what her future involvement would be in the trial of Inusiq Shoo.

Shortly after noon on September 5, 1990, Corporal Chisholm completed his duties as court liaison officer and went to a travel agent in Iqaluit to arrange for the earliest possible air transportation to take the complainant to Vancouver. He returned to the RCMP Detachment

Iqaluit shortly after 1 p.m. On arriving at the office he met Father Andrew MacBeth, a Catholic priest, who was on his regular visit to the prisoners in the cells in Iqaluit. Father MacBeth had worked with Corporal Chisholm in the establishment of a victims' assistance program in Iqaluit. Corporal Chisholm told Father MacBeth that he had some good news which the Father could take to one of the prisoners, and he explained to Father MacBeth about the assault and the arrest of Kitty Nowdluk-Reynolds and the fact that she was about to be released from custody so that she could travel to Vancouver. Corporal Chisholm also thought it desirable that the complainant have the support and assistance of Father MacBeth in organizing her affairs during the remaining hours of her stay in Iqaluit. Father MacBeth gained the impression that Corporal Chisholm was fearful of the complainant's safety.

Corporal Chisholm then took Father MacBeth to the cell, introduced him to Kitty Nowdluk-Reynolds, and left to complete the arrangements for her flight from Iqaluit to Vancouver.

While visiting with the complainant, Father MacBeth confirmed to her that she had been released from custody and was free to leave. He suggested that she had several options as to how to spend the time before her flight departed, including remaining in a common room at the detachment or spending the afternoon with Father MacBeth. Kitty Nowdluk-Reynolds chose to go with Father MacBeth. On Corporal Chisholm's return to the detachment office, he advised Kitty Nowdluk-Reynolds and Father MacBeth that, subject to her agreement, he had tentatively arranged for a flight from Iqaluit via Yellowknife which would leave that afternoon and arrive in Vancouver at about 10:30 p.m. Kitty Nowdluk-Reynolds expressed concerns about transportation from the airport to the Timberland Motel in Surrey. The complainant advised Corporal Chisholm that there was no one able to meet her and provide transportation, and she was concerned that the buses might not be running at the time of night that the flight would arrive in Vancouver. Corporal Chisholm undertook to obtain further information about transportation available at Vancouver International Airport. There was discussion between Corporal Chisholm, the complainant, and Father MacBeth concerning bus transportation, and Corporal Chisholm advised her that if she experienced difficulties with ground transportation she should go to the RCMP detachment at Vancouver International Airport. It was the testimony of the complainant and Father MacBeth that Corporal Chisholm told her that the RCMP would assist her in arranging transportation to her home. Kitty Nowdluk-Reynolds assumed from this that the RCMP would have a vehicle available for her use. Father MacBeth's evidence was that Kitty Nowdluk-Reynolds was assured that if bus transportation was not available, the RCMP detachment at Vancouver International Airport would help her or ensure that she had transportation home. Corporal Chisholm testified that his assurance to Kitty Nowdluk-Reynolds was based on his experience in the North that a witness in need of travel assistance could go to the nearest RCMP detachment, explain their travel status, and the detachment would make every effort to assist the witness.

From the evidence of the complainant and Father MacBeth, it is clear that Corporal Chisholm was concerned about the complainant during her remaining hours in Iqaluit and that he was anxious that she avail herself of the assistance of Father MacBeth. He was concerned about the complainant's well-being after her release and, from his experience in such matters, recognized the emotional strain which the complainant was experiencing as the victim of the assault and of the process that she had just experienced. He did not want her to be unattended in the community. The possibility of her contemplating suicide crossed his mind.

Kitty Nowdluk-Reynolds accepted the assistance offered by Father MacBeth, and she left the detachment office with him, having been told by Corporal Chisholm that he would make further inquiries about transportation from Vancouver International Airport to her home in Surrey and would leave a message for her at the Iqaluit airport. Father MacBeth took the complainant to a store where she met her sister, and the three of them went to the home of Kitty Nowdluk-Reynolds' mother. Father MacBeth left her there for approximately 45 minutes and then returned and took her to the airport to await her flight. While at the airport, the complainant spoke to a ticket agent who gave her a message from Corporal Chisholm to the effect that everything was arranged for her in Vancouver. It was the evidence of Corporal Chisholm that he confirmed that buses would be running at the time of Kitty Nowdluk-Reynolds' arrival and that the message he left was that the bus fare would be $5 which could be claimed back through the clerk of the court.

Kitty Nowdluk-Reynolds boarded the aircraft in Iqaluit and flew, without incident, to Vancouver, arriving at approximately 10:30 p.m.

Immediately upon her arrival, Kitty Nowdluk-Reynolds walked from the terminal to RCMP Detachment Vancouver International Airport and spoke to a commissionaire. She identified herself and told the commissionaire that she had come for a ride home. The commissionaire reported this matter to Corporal J. B. Cull (now retired) who was Acting Watch Commander on that night. As Watch Commander, Corporal Cull was in charge of the five RCMP Constables who were then on duty. The normal complement of the detachment is 10 to 12 members but on that evening the detachment was under strength by reason of the illness of members and absences due to vacation. Corporal Cull spoke to Kitty Nowdluk-Reynolds and found her quite demanding in respect of her request for transportation to her home. It was the testimony of the complainant that Corporal Cull asked her, "How many beers have you had?" Corporal Cull did not recall that conversation but did acknowledge in his testimony taken on commission that the complainant smelled of liquor on her breath. He learned from her that she had come from Iqaluit, but he had no idea where that was nor did he appreciate the ordeal she had just completed. Corporal Cull acknowledged that the detachment often receives requests from people seeking rides, especially if they are returning from attendance at court proceedings.

Corporal Cull testified that the complainant was quite heated in her demand, and he attempted to calm her down. He offered her the use of a telephone so that she could call someone to come and get her. He learned then that her boyfriend did not have a car and that there was no phone in the motel unit where they lived.

Corporal Cull, with the assistance of Constable C. Gramuglia, checked the records in the detachment office and found no trace of any request that the complainant be provided with transportation. Telephone calls were placed to RCMP Detachment Richmond and RCMP Detachment Surrey in an attempt to obtain assistance from those detachments in providing a vehicle to transport the complainant to the Timberland Motel in Surrey. Neither of these detachments was able to provide this assistance.

Corporal Cull was of the view that he had no obligation, in the absence of a firm arrangement made with some other detachment, to provide transportation for Kitty Nowdluk-Reynolds, and since the detachment was shorthanded there was no way in which he could respond to her request.

The matter was discussed with Constable Gramuglia who thought there were buses that would provide transportation, and Corporal Cull asked him to take the complainant to the bus stop. Constable Gramuglia took Kitty Nowdluk-Reynolds to the bus stop and ascertained from the bus driver which bus would take the complainant to her destination. He then assisted Kitty Nowdluk-Reynolds to enter the bus with her suitcase and put money in the fare box. Constable Gramuglia rode on the bus to the detachment office where he alighted, and the bus continued towards its destination.

The bus from Vancouver International Airport took Kitty Nowdluk-Reynolds to a bus interchange located in a remote rural area where she learned from the driver that she had to transfer to another bus. This involved a wait of approximately 45 minutes during which time she was alone in a dark, deserted location. She became frightened and was sick to her stomach. She eventually boarded a bus which took her to a bus stop near the Timberland Motel, arriving at about 1:45 a.m. on September 6, 1990. Coincidentally, just as she arrived at the bus stop, she was met by Robert Callaghan who had learned of her arrival time in Vancouver and was walking towards the public telephones at the front of the motel, intending to call the RCMP to ascertain her whereabouts.

Thus ended Kitty Nowdluk-Reynolds' odyssey and her involvement with the RCMP and the criminal justice system. Apparently Robert Callaghan aspired to a career in journalism, and he reported these incidents to a reporter for the Peace Arch News. This led to the public exposure of these events. The filing of the complaints led to this inquiry.

IV. THE COMPLAINTS OF KITTY NOWDLUK-REYNOLDS

(A) Complaint File No. 2000-PCC-PCC-90721

The complaint reads as follows:

> On June 7, 1990, in Iqaluit, N.W.T., Ms. Nowdluk was assaulted, choked unconscious and raped by a man named Unusirq Shoo. Twenty-five minutes after the assault and rape, Shoo went to the RCMP Detachment in Iqaluit on his own volition and confessed. He was arrested and held in custody until the trial. Ms. Nowdluk was taken to the Baffin Island Regional Hospital where two Members of the said Detachment took a statement from her and photographs of her facial injuries.
>
> A few days after the incident, pursuant to plans which had been made prior to the assault, Ms. Nowdluk moved to Surrey, B.C. to live with her fiancé. At or around July 23, 1990, at her residence in Surrey, Ms. Nowdluk was served a subpoena by an unidentified female Member of the Surrey, B.C. RCMP Detachment. The Member told Ms. Nowdluk that she had to appear in Court in Iqaluit but failed to give Ms. Nowdluk a letter and a card from the Prosecutor's Office in Iqaluit which explained that travel arrangements had been made on her behalf and that her testimony in Court was deemed essential to the trial. Ms. Nowdluk learned about the contents of the letter and card from the Prosecutor when she was in Iqaluit in September.
>
> Ms. Nowdluk states that the unidentified Member of the Surrey Detachment who served her the subpoena failed to inform her properly of the circumstances surrounding her Court appearance and wishes to lodge a complaint against the conduct of the Member.

FINDINGS:

1. The unidentified member who is the subject of this complaint is Constable J. L. Anderson, RCMP Detachment Surrey.

2. On July 10, 1990, in the discharge of her duty, Constable Anderson served Kitty Nowdluk-Reynolds with a subpoena requiring her to attend in court in Iqaluit, N.W.T. on July 27, 1990.

3. At the time of the service of the subpoena, Constable Anderson first identified Kitty Nowdluk-Reynolds, informed her that she was serving a subpoena upon her, read the contents with the complainant, and handed her a copy of the subpoena. Constable Anderson asked Kitty Nowdluk-Reynolds if she understood and advised her to call RCMP Detachment Iqaluit if she had any questions.

4. The complainant understood that she was being served with a subpoena and that she was being compelled to appear in court on the appointed day.

5. No other document was served upon or delivered to Kitty Nowdluk-Reynolds by Constable Anderson.

6. Constable Anderson and the complainant had no further discussions regarding the importance of her compliance with the subpoena or the availability of travel arrangements.

7. A letter advising Kitty Nowdluk-Reynolds of a telephone number which she could call to ascertain if there was any change in the requirement that she attend in court at Iqaluit, and by means of which she could obtain travel assistance, had been prepared by the Department of Justice, Northwest Territories, at Yellowknife. This letter was either not sent to RCMP Detachment Surrey for delivery to the complainant or, if sent, was either not received or was misplaced by the RCMP. No such document was received by Constable Anderson for service on the complainant. The information contained in that letter was never communicated, in any manner, to the complainant.

8. The RCMP National, Divisional, and Surrey Detachment policies contain no provision or directive as to the manner in which a subpoena is to be served on any person and, with the exception of "E" Division policy applicable to indigent civilian witnesses, provide no instruction to RCMP members to communicate to any persons served with a subpoena information pertaining to the availability of travel expense allowance or the means by which a subpoenaed witness may verify the requirement to respond to the subpoena.

9. Constable Anderson, upon being assigned the duty to serve subpoenas and other court documents in April, 1990, received no instructions or training in document service procedures. On July 10, 1990, she was not familiar with Divisional or Detachment policy and only became aware of such policy as did exist when she became involved in this inquiry. Given the paucity of policy on the subject, this lack of knowledge on the part of Constable Anderson is of little significance.

10. While Constable Anderson fulfilled the minimum technical requirements for the service of a subpoena, she showed lack of judgment in failing to explain to Kitty Nowdluk-Reynolds the significance of the subpoena and the obligation it imposed on her, and in failing to inquire whether or not assistance might be necessary in order for her to travel to Iqaluit.

RECOMMENDATIONS:

1. As the Criminal Code stipulates subpoenas in criminal proceedings must be served by peace officers, this procedure is one which, on appropriate request, becomes a duty for the RCMP to fulfil. Accordingly, the RCMP should, as a matter of policy, require the agency requesting service of a subpoena to provide, in every case, a notice to be delivered to the witness giving a telephone number and identifying an official with whom the witness may communicate for clarification of any aspect of the matter, including the availability of assistance with necessary travel arrangements. When developing this policy, the RCMP should design the form of the notice to the witness and standardize its use throughout Canada.

2. The RCMP should take steps to ensure that each member detailed for duty in the service of subpoenas is instructed in the use of procedures which will ensure that the person being served is aware of the nature, purpose, and significance of a subpoena, that it is a court order, and the consequences of failing to comply. If the RCMP member is not satisfied that the purpose and effect of the subpoena has been understood by the person being served, this fact must be reported to a superior and special procedures adopted to ensure that the person served is aware of the obligation imposed by the subpoena and the consequences of non-compliance.

3. The member serving the subpoena should, in every instance, advise the person being served that the subpoena is a court order and that failure to comply with the subpoena may result in a charge being laid and a warrant issued for the witness' arrest.

4. The RCMP should take measures to ensure that its members who serve subpoenas properly complete the affidavit of service by swearing as to the veracity of the contents of the affidavit before a Commissioner or a Notary Public, as the circumstances may require.

(B) Complaint File No. 2000-PCC-90753

The complaint reads as follows:

> Late afternoon, on or around July 23, 1990, Ms. Nowdluk's fiancé, Mr. Robert Callaghan, telephoned the RCMP Detachment in Iqaluit, NWT in order to find out the consequences should Ms. Nowdluk elect not to appear in Court, as she was scared to meet with her assailant. Mr. Callaghan was told by an unidentified Member of the said Detachment who was familiar with Ms. Nowdluk's situation, that it was in Ms. Nowdluk's best interest to appear in Court, but that nothing would happen to her if she did not appear. The Member mentioned that he was not certain regarding this information, however, he did not refer the caller to the Territorial Court which issued the subpoena. In view of this information, Ms. Nowdluk elected not to appear in Court.
>
> Ms. Nowdluk states that the unidentified Member who misinformed her was negligent in the performance of his duties and wishes to lodge a complaint against the conduct of the Member.

Before recording its findings on this complaint, the Commission wishes to report upon a procedural matter.

During the course of the hearing, Ms. Marion Buller, counsel for Kitty Nowdluk-Reynolds, advised the Commission that the complainant wished to withdraw this complaint. In view of the seriousness of the allegation of negligence on the part of an RCMP member, the fact that, if the allegation were substantiated, the complainant could be excused for her failure to respond to the subpoena, and the extensive publicity that was given to the incident, the Commission decided that it was in the public interest that the RCMP member involved be afforded the opportunity of answering the allegations, and that the factual basis for the allegation be ascertained.

It is also the opinion of the Commission that a complainant retains no property in a complaint lodged under Part VII of the RCMP Act, and is therefore not at liberty to withdraw the complaint from consideration once any inquiry into the public complaint has been undertaken. Once made, the disposition of a complaint is a matter for the determination, first, by the Commissioner of the RCMP and thereafter by the Commission.

The Commission, therefore, proceeded to receive evidence upon which the facts underlying the complaint could be examined.

The Commission observes that the allegation in this complaint, while seemingly minor in comparison with the allegations in some of the other complaints, is nonetheless central to its consideration of events which gave rise to other complaints. If the facts stipulated in this complaint could be established, then the failure of Kitty Nowdluk-Reynolds to respond to the subpoena, and her arrest and incarceration, might be the direct consequence of advice carelessly or negligently given by a member of the RCMP. If these facts could not be confirmed, then other but perhaps more serious consequences emerge. In light of the importance which the Commission assigns to these matters, it will report in some detail the evidentiary conflicts which emerged during this aspect of the hearing.

FINDINGS:

1. Evidence presented to the Commission during the hearing leaves no doubt that during the months from June to September, 1990 the only member of the RCMP Detachment Iqaluit who could fit the description given by Robert Callaghan of the member to whom he claims he spoke on the afternoon of July 23, 1990, is Constable Joseph Olivier Michel Beaudoin who was the investigating officer into the sexual assault of Kitty Nowdluk-Reynolds.

2. The testimony of Kitty Nowdluk-Reynolds and Robert Callaghan was to the effect that, shortly after the service of the subpoena by Constable Anderson, Robert Callaghan went to one of the public pay phones located outside the Timberland Motel office and placed a collect call to the RCMP Detachment Iqaluit. Robert Callaghan testified that the purpose of this telephone call was to ascertain whether or not the complainant was obliged to travel to Iqaluit in response to the subpoena. A few moments after Robert Callaghan left the motel unit for this purpose, Kitty Nowdluk-Reynolds joined him at the telephone booth and overheard him say, while speaking into the telephone, "So she doesn't have to go." On this occurring, Kitty Nowdluk-Reynolds returned to the motel unit where she was joined shortly by Robert Callaghan. He told her that he had telephoned the RCMP in Iqaluit and had been told that, although it was important for her to obey the subpoena, nothing would happen to her if she did not go. It was the testimony of Kitty Nowdluk-Reynolds that the receipt of this information led to her decision not to attend in Iqaluit as required by the subpoena.

   The complainant specified in her formal complaint that this telephone call took place on July 23, 1990. This was the position taken by Kitty Nowdluk-Reynolds and Robert Callaghan during the time they were interviewed by the staff of the Commission prior to the lodging of the complaint, and the date was confirmed by them during the investigation into the complaint undertaken by the RCMP. However, at the hearing, the

testimony of Kitty Nowdluk-Reynolds and Robert Callaghan was to the effect that the telephone call occurred on July 9, 1990. The complainant explained the discrepancy and recalled this date because it was the day before her daughter's birthday. Robert Callaghan also testified at the hearing that the date was July 9, 1990, and he accounted for the discrepancy, relying upon notes which he had made concerning this telephone call. Under cross examination, the testimony of Robert Callaghan as to the time when such notes were made and their accuracy was totally discredited.

The Commission has found that the subpoena was served on July 10, 1990 and therefore the telephone call could not have occurred on either July 9, 1990 or July 23, 1990.

It was the testimony of Robert Callaghan that he placed the collect telephone call to RCMP Detachment Iqaluit and when the call was answered he asked to speak to someone in charge whereupon a person came on the phone and introduced himself as Constable "Michael" or "Mike." Robert Callaghan had a conversation with this RCMP member whom he said he remembered from an incident involving the Constable which had occurred when he, Callaghan, had worked at the Royal Canadian Legion in Iqaluit. He testified that he told the Constable that the complainant had received a subpoena and asked whether she had to respond to it since the RCMP had a witness and the confession of the accused. Mr. Callaghan said that the RCMP member to whom he spoke stated that he did not think the complainant had to appear since they had a witness and a confession. Mr. Callaghan also testified that the RCMP member told him that no further action would be taken against Kitty Nowdluk-Reynolds if she did appear but it would be best if she did come to Iqaluit. Robert Callaghan further testified that he asked how Kitty Nowdluk-Reynolds could get to Iqaluit and was advised that there should have been a card and a phone number with instructions served with the subpoena. When Mr. Callaghan advised the RCMP member that the complainant had never received such information, the RCMP member suggested that Mr. Callaghan check the documents served to ensure that these instructions had not been received.

Evidence before the Commission at the hearing disclosed that when Robert Callaghan was first interviewed by the staff of the Commission in connection with the lodging of the complaint, he indicated that the RCMP member to whom he spoke on the telephone was named "Peter" and that he had a French-sounding last name. He was interviewed further on this issue on January 22, 1992 at which time he advised the staff member of the Commission that he had since identified the RCMP member as Mike "Bodeen" or "Bodignon." During this interview he confirmed that he had spoken to this officer between 4 and 6 p.m. on July 23, 1990. He also advised that he was certain of the date because he made written notes of events on the day that the events happened.

Constable Beaudoin testified at the hearing that he never spoke with Robert Callaghan with respect to either the subpoena served on Kitty Nowdluk-Reynolds or her obligation to respond to that subpoena, and that he was not on duty in Iqaluit on July 8, 9, 10, and 11 of 1990.

The Commission received evidence by way of records from British Columbia Telephone Company, which provided the pay-phone service at the Timberland Motel in Surrey, B.C., and from Bell Canada, which provided telephone service to RCMP Detachment Iqaluit. The records provided by British Columbia Telephone Company were made and retained by that company in the usual and ordinary course of its business and disclosed calls originating from the telephone in the office of the Timberland Motel and two pay telephones maintained at that location. Those records disclose that during the period from May to September of 1990 there was only one call from a pay phone at the Timberland Motel directed to RCMP Detachment Iqaluit and that call was recorded between May 26 and June 24, 1990. Similar records produced by Bell Canada disclosed only one telephone call received at RCMP Detachment Iqaluit which originated from a pay telephone at the Timberland Motel, Surrey, B.C. This call was recorded on June 19, 1990. The telephone number disclosed by the records of Bell Canada with respect to this telephone call is identical to the telephone number disclosed by the records of British Columbia Telephone Company.

The Commission is compelled to conclude that there was no telephone conversation between Robert Callaghan and any member of the RCMP Detachment Iqaluit as alleged in this complaint.

3. The Commission finds that this complaint is unfounded.

(C) Complaint File No. 2000-PCC-90754

The complaint reads as follows:

> On August 28, 1990, at approximately 1100 hours, Constable Davidson, a Member of the RCMP Surrey, B.C. Detachment arrived at Ms. Nowdluk's residence in order to arrest her. Her fiancé, Mr. Robert Callaghan, opened the door and let the Constable in. The Constable was polite to Mr. Callaghan, however, when he saw Ms. Nowdluk and realized that she was an Inuit woman his facial expression changed and he was quite abrupt with her. He told Ms. Nowdluk: "I am here to arrest you for failing to appear in Court." Before leaving the residence, Ms. Nowdluk requested to use the washroom. The Constable stood in the

door and would not allow her privacy. The Constable did not inform Ms. Nowdluk of her constitutional right to retain and instruct counsel and did not provide a warrant for her arrest. He handcuffed Ms. Nowdluk and lead her by the arm to the RCMP vehicle. At the Detachment, Ms. Nowdluk asked to see the warrant for her arrest, the Constable told her that he would bring it to her later, however, she never saw the warrant. Ms. Nowdluk was detained overnight at the Detachment.

Ms. Nowdluk states that Constable Davidson displayed a prejudiced attitude towards her in the manner which he treated her and that he failed to inform her of her constitutional right to retain and instruct Counsel. Ms. Nowdluk wishes to lodge a complaint against the conduct of Constable Davidson.

FINDINGS:

1. Consequent upon the failure of Kitty Nowdluk-Reynolds to appear before the Territorial Court in Iqaluit on July 27, 1990, a warrant for her arrest was issued. On August 23, 1990, RCMP Detachment Iqaluit requested the assistance of RCMP Detachment Surrey for the execution of the warrant, but an attempt made on that day was unsuccessful as the complainant was not at home. RCMP Detachment Iqaluit renewed its request for the execution of the warrant on August 27, 1990 and on the following day Constable L. S. Davidson was detailed for that duty. In preparation for executing the warrant, Constable Davidson briefed himself on the particulars concerning Kitty Nowdluk-Reynolds and discussed with Corporal P. Juby his assessment of the complainant based upon his telephone interview with her on August 9, 1990.

2. At approximately 12:30 p.m. on August 28, 1990, Constable Davidson presented himself at Unit 2 of the Timberland Motel, identified himself to Robert Callaghan who answered the door, and asked for Kitty Nowdluk-Reynolds. He stepped inside the motel unit, confirmed the identity of the complainant, and advised her that he was there to place her under arrest under a Canada-wide warrant for failure to appear at the court in Iqaluit and that she would have to go back to Iqaluit to give evidence. He then read to her, from a card which he kept for that specific purpose, the following words:

   > It is my duty to inform you that you have the right to retain and instruct counsel without delay. You are not obliged to say anything but anything you do say may be given in evidence.

Constable Davidson did not ask Kitty Nowdluk-Reynolds if she understood her Charter rights or the legal warning.

3. The Commission finds that these cautionary words which, on the evidence of Constable Davidson, were given in purported compliance with section 10(d) of the Canadian Charter of Rights and Freedoms, were insufficient for that purpose. On February 1, 1990, the Supreme Court of Canada decided, in the case of R v. Brydges, that the arresting officer, in addition to the words used by Constable Davidson, was obliged to inform the arrested person, fully, of the availability of duty counsel and the services of Legal Aid. When giving its decision, the Court indicated that the application of this ruling should be deferred for 30 days to afford peace officers time to adopt any change in the form of the wording used at the time of the arrest as would be necessary to comply with the decision. Hence, the words used by Constable Davidson on August 28, 1990 did not meet the test of constitutionality on that date. The Commission further finds that at no time after her arrest by Constable Davidson was Kitty Nowdluk-Reynolds sufficiently informed of her constitutional right to counsel.

4. Constable Davidson testified that in effecting the arrest he conducted himself in a direct and professional manner. Constable Davidson asked Kitty Nowdluk-Reynolds to pack such personal effects as she would require for her trip to Iqaluit. At this juncture the complainant reacted with anger and verbal abuse, and Constable Davidson attempted to calm her and sought the assistance of Robert Callaghan for that purpose. In these circumstances, Constable Davidson positioned himself in such a way that he was able to exercise control against any action which might be taken by the complainant or Robert Callaghan. When Kitty Nowdluk-Reynolds attempted to use the bathroom, Constable Davidson first ascertained whether there were any means by which she could escape and, while the complainant was using the bathroom, took up a position at the door which enabled him to observe the window but not the complainant. When Kitty Nowdluk-Reynolds had gathered her belongings, Constable Davidson placed her in handcuffs and escorted her to his vehicle where she was placed in the rear seat. She was driven to the RCMP Detachment Surrey and booked into the cells.

5. Kitty Nowdluk-Reynolds testified that when she identified herself in response to the inquiry of Constable Davidson, his facial expression and tone of voice altered from that which she observed while the constable was speaking with Robert Callaghan. Kitty Nowdluk-Reynolds was conscious of the fact that Constable Davidson became more aggressive and more forceful when speaking with her. It was her assessment, based on her experience in association with persons who were not Inuit, that Constable Davidson was exhibiting a discriminatory or prejudicial attitude because of her race. Her experience had led her to conclude that the attitude thus expressed conveyed the view that she was inferior because she was an Inuk.

Constable Davidson was questioned about his attitude and denied that the manner in which he conducted himself during the arresting process was in any way different than that which he would have employed in any other circumstance. He acknowledged that he was aware that he was arresting a victim of a sexual assault who had expressed an unwillingness to return to Iqaluit, and he considered that the proper approach in such a delicate and grave matter was to be professional and direct. He acknowledged that the tone of his voice and his body language may have reflected his intention to establish and maintain control of the situation against any eventuality. He also testified that as a young boy he had lived among Inuit people and had great respect for them.

In the absence of any other cogent evidence on this subject, the Commission has no way to resolve the conflict between this aspect of the testimony given by Kitty Nowdluk-Reynolds and Constable Davidson. The Commission cannot say that Kitty Nowdluk-Reynolds' interpretation of Constable Davidson's attitude and mannerisms was inaccurate; neither can it say that the manner in which Constable Davidson conducted himself when making the arrest could not have been misconstrued by the complainant in light of her prior experience with others. The act of making an arrest - charging the individual with a criminal act and interfering with the liberty of the person - is not one which lends itself to gentleness or sensitivity.

6. Upon arrival at RCMP Detachment Surrey, Kitty Nowdluk-Reynolds was booked into a cell by Constable Davidson. He then arranged to have Betty Smith, a volunteer victim services worker, visit with the complainant because of his concern that her emotional state indicated the need for counselling services and was preventing her from comprehending what she was being told and coming to terms with her circumstances. Constable Davidson took this action out of his concern for the complainant and, in so doing, exhibited a level of concern and sensitivity for Kitty Nowdluk-Reynolds which was most appropriate to the circumstances which this duty presented to him.

7. The Commission finds that Constable Davidson failed to inform Kitty Nowdluk-Reynolds properly of her constitutional right to retain and instruct counsel and that, while Kitty Nowdluk-Reynolds was in custody at RCMP Detachment Surrey, no other person so informed her or took any action to ensure that her constitutional right was respected.

8. While Constable Davidson did not give Kitty Nowdluk-Reynolds a copy of the warrant for her arrest, he did advise her of the reason for the issue of the warrant and thereby complied with the requirements of the Criminal Code.

RECOMMENDATIONS:

1. The Commissioner must take immediate action to ensure that the procedures followed by members of the RCMP in effecting an arrest conform strictly to the Canadian Charter of Rights and Freedoms as interpreted, from time to time, by the courts. Failure to conform to these lawful requirements exposes the RCMP members to allegations of the denial of constitutional rights and increases the likelihood that offenders may escape the consequences of their criminal acts because of the procedural error. Steps should be taken to ensure that all members of the RCMP are informed immediately of changes in procedures required to conform with the Canadian Charter of Rights and Freedoms as indicated by court decisions.

2. RCMP policy and training programs should be examined and, where found wanting, modified to ensure that all members are trained in the manner in which police services are to be delivered in a society which is experiencing increasing ethnic, cultural, and linguistic diversity. Cross-cultural training should be given to all recruit and serving members of the RCMP.

3. RCMP policy and training programs should incorporate special provisions relating to the manner in which the duties of RCMP members are to be discharged when they involve interaction with victims of crime. In particular, special procedures should be developed for use when dealing with women who are victims of crime, including the use of women members of the RCMP specially trained in the needs of victims who have been traumatized by a criminal offence.

(D) Complaint File No. 2000-PCC-90755

The complaint reads as follows:

> On August 29, 1990, Ms. Nowdluk was taken to the Cloverdale, B.C. Courthouse where a Justice of the Peace remanded her to Lakeside Correctional Center in Burnaby, B.C. On September 2, 1990, RCMP Special Constable Pauline Tetso, a Member of the RCMP Iqaluit, NWT Detachment, accompanied Ms. Nowdluk to Edmonton, Alta. Ms. Nowdluk missed a direct flight to Iqaluit because Constable Tetso slept in that morning. Other travel plans had to be made via Toronto and Ottawa. Ms. Nowdluk suffered considerable discomfort and embarrassment while being detained in cells and handcuffed in airports while in transit.

Ms. Nowdluk states that Special Constable Tetso was negligent in the performance of her duties when she caused her to miss a direct flight to Iqaluit and wishes to lodge a complaint against the conduct of the Special Constable.

FINDINGS:

1. On August 29, 1990, after spending the previous night in a cell at RCMP Detachment Surrey, Kitty Nowdluk-Reynolds was taken to the courthouse in Cloverdale, British Columbia where she was interviewed by duty counsel. The identity of duty counsel and the advice she gave to the complainant is not known to the Commission, but Kitty Nowdluk-Reynolds was told that the duty counsel would speak with her again. This did not occur. Rather than being taken to court, the complainant was taken to what is described as the sheriff's desk and there remanded into custody at Lakeside Correctional Centre by a justice of the peace. On that occasion Kitty Nowdluk-Reynolds was not represented by counsel and no inquiry was made of her nor advice given with respect to representation by counsel.

2. The Commission also finds that, except for the brief interview with duty counsel at the courthouse at Cloverdale, British Columbia, Kitty Nowdluk-Reynolds, throughout the entire episode ending on September 5, 1990, was never advised or represented by counsel.

3. The Commission finds that none of the RCMP members involved with Kitty Nowdluk-Reynolds at any stage in these proceedings has properly discharged the obligation set out in section 10(b) of the Canadian Charter of Rights and Freedoms. The Charter provision is rendered meaningless unless positive steps are taken to ensure that the arrested person understands his or her constitutional right and is assisted in retaining and instructing counsel.

4. On August 28, 1990, Constable Davidson had reported the arrest of Kitty Nowdluk-Reynolds to RCMP Detachment Iqaluit which in return confirmed the warrant and advised that arrangements would be made to have the complainant escorted to Iqaluit. Staff Sergeant Howie, who was then the Acting Officer in Charge of Criminal Operations for the Northwest Territories, authorized the escort, and RCMP Detachment Iqaluit made arrangements with the provost section of RCMP Detachment Yellowknife for the escort of Kitty Nowdluk-Reynolds to Iqaluit by September 4, 1990. Constable Pauline Tetso, a special constable with RCMP Detachment Yellowknife, was assigned this duty and flew to Vancouver on September 1, 1990 for the purpose of taking custody of the complainant who was then being held at Lakeside Correctional Centre.

The Commission can find no justifiable excuse for this process to take five days, particularly when it is considered that the terms of the warrant authorizing the arrest of Kitty Nowdluk-Reynolds were such that only a court in the Northwest Territories could make any order for her disposition other than that she remain in custody. It is certain that the length of the incarceration of Kitty Nowdluk-Reynolds in Lakeside Correctional Centre was unnecessarily extended as a direct result of the failure of the RCMP to provide for her prompt escort to the Northwest Territories where an application could be made to a court of competent jurisdiction for more appropriate disposition of the complainant pending her appearance in Iqaluit on September 4, 1990.

5. There is no dispute in any of the evidence coming before the Commission at the hearing that on September 2, 1990 Kitty Nowdluk-Reynolds was escorted from Lakeside Correctional Centre by Constable Pauline Tetso, taken to Vancouver International Airport and thence, via Edmonton, to Yellowknife. During most of that journey the complainant was kept in handcuffs.

   The evidence of Staff Sergeant Howie disclosed that there is no policy in "G" Division with respect to the use of handcuffs during the escort of prisoners. The procedure is solely within the discretion of the officer having custody of the prisoner. Constable Tetso testified that she had been trained to use handcuffs when escorting a prisoner, that it was her practice to do so, and that she was not aware that she had any discretion in the matter. She testified that, had she been aware of the discretion, she would nevertheless have kept Kitty Nowdluk-Reynolds in handcuffs while escorting her through busy and unfamiliar airports. In the circumstances, the Constable's decision was not unreasonable. The Commission finds that while the use of handcuffs may cause discomfort and embarrassment, the decision to use them is properly left to the person who is responsible for the custodial duty.

6. On the morning of September 3, 1990, Constable Pauline Tetso overslept with the result that she was unable to continue the escort of Kitty Nowdluk-Reynolds, as planned, from Yellowknife to Iqaluit. Although Kitty Nowdluk-Reynolds had made herself ready to leave in time to catch the flight, no other member of the RCMP Detachment Yellowknife was able to carry out the planned departure. This neglect on the part of Constable Tetso resulted in a flight, later that day, from Yellowknife to Edmonton to Toronto and Ottawa where Kitty Nowdluk-Reynolds again spent a night in jail before continuing the flight to Iqaluit on the morning of September 4, 1990.

7. The Commission finds that Constable P. Tetso was negligent in performance of her escort duty and, as a result, Kitty Nowdluk-Reynolds was subjected to a lengthy, tedious flight across Canada and made to experience the facilities of yet a fourth jail cell.

8. The Commission finds that the RCMP was unstinting in its use of resources to transport Kitty Nowdluk-Reynolds to Iqaluit even though, by so doing, they ignored opportunities to afford the complainant the right to retain counsel and to appear before a court for consideration of more appropriate custodial arrangements.

RECOMMENDATIONS:

1. The Commissioner of the RCMP, the Officer Commanding RCMP "G" Division, and Constable P. Tetso should write to Kitty Nowdluk-Reynolds and provide her with an explanation of the circumstances giving rise to the arrangement made for her escort, and tender to her an apology for the inconvenience and distress occasioned by the delays which occurred in escorting her from Vancouver to Iqaluit.

2. RCMP policies and procedures should be modified to ensure that persons who are in their custody are not detained in cells to suit the convenience of RCMP members. If detention is necessary, then the RCMP should ensure that the person has the early opportunity of appearing before a judge or justice of the peace who can review the custodial arrangements. All escorts should take the most direct route to the planned destination with minimum inconvenience to the person under escort.

(E) Complaint File No. 2000-PCC-90756

The complaint reads as follows:

> When Ms. Nowdluk arrived at the RCMP Detachment in Iqaluit, NWT on September 4, 1990, she was told that she had to appear in Court without delay and was refused permission to have a shower although she had not been allowed to use shower facilities for six days.
>
> On the way to the Courthouse, detainees from the Baffin Correctional Centre in Iqaluit were transported in the same vehicle as Ms. Nowdluk, and her assailant was one of them. Ms. Nowdluk was appalled at this inconsiderate action and was scared that her assailant would threaten her.
>
> In Court, the Judge delayed the preliminary hearing until September 27, 1990. Ms. Nowdluk feared that she would be kept in custody until that date and that there was no one in Surrey, B.C. to look after her fiancé who was suffering from back ailments. This caused Ms. Nowdluk to feel distressed that no one cared about her, the victim. After her Court

appearance, Ms. Nowdluk was detained again overnight, although she had been told that she would be released after her Court appearance and could have stayed in town with her mother.

On September 5, 1990, a priest came to Ms. Nowdluk's cell and informed her that she was allowed to return home. Ms. Nowdluk objects that a priest came to her after RCMP Members arrested her, accompanied her from Surrey to Iqaluit and detained her for a week.
Ms. Nowdluk states that the unidentified Members of the Iqaluit Detachment who were responsible for her well-being displayed an inconsiderate behaviour when they did not allow her time to have a shower before going to Court; when they transported her in the same vehicle as her assailant and when they failed to keep her informed of the time when she would be released. Ms. Nowdluk wishes to lodge a complaint against the conduct of these unidentified Members.

FINDINGS:

1. Upon her arrival in Iqaluit on September 4, 1990, Kitty Nowdluk-Reynolds was advised that her appearance in court was imminent and she was refused an opportunity to have a shower. She was told that she had time to change her clothes in the cell and would then be transported to the courthouse. From the testimony of Staff Sergeant Howie, it appears that there is no RCMP policy in the Northwest Territories dealing with the personal hygiene needs of persons in custody in RCMP cells.

2. Corporal (then Constable) Chisholm was the member of RCMP Detachment Iqaluit assigned to court liaison duty. It was his responsibility to transport Kitty Nowdluk-Reynolds to the courthouse in time for the commencement of court proceedings on the afternoon of September 4, 1990. For that purpose Corporal Chisholm had available an RCMP vehicle equipped for the transportation of prisoners. Kitty Nowdluk-Reynolds was placed in that vehicle with a matron, driven to Baffin Correctional Centre where other male prisoners were placed in a separate compartment in the vehicle, and then taken to the courthouse. Among the male prisoners was Inusiq Shoo, the perpetrator of the grievous sexual assault against Kitty Nowdluk-Reynolds on June 7, 1990. While there was a conflict in the testimony given by Kitty Nowdluk-Reynolds and Corporal Chisholm as to her prior knowledge of these transportation arrangements, the Commission considers that this difference is of no consequence. It is the finding of the Commission that transportation arrangements which lead to an encounter between the victim of a violent crime and the perpetrator are improper. The Commission appreciates that availability of equipment or personnel may create significant difficulty

in meeting scheduled court appearances. The Commission finds, however, that Corporal Chisholm made no attempt to determine whether other resources might have been made available. As an alternative, Corporal Chisholm could have made appropriate arrangements for continued custody of the complainant at the detachment while the other prisoners were being transported to the courthouse. This may have caused some delay, but the Commission is certain that, properly informed, a court would accommodate the delay occasioned by these circumstances.

On the testimony of Staff Sergeant Howie, it appears that there is no "G" Division policy dealing with the transportation of male and female prisoners in the same vehicle, and no policy dealing with the transportation of victims and perpetrators in the same vehicle. Taking into account the evidence given by Father MacBeth that Corporal Chisholm was in the process of developing a victims' assistance program, the absence of any policy with regard to transport matters does not excuse his conduct. Common sense and sound judgment would have required other action.

3. The Commission finds that the allegation in this complaint concerning the delay of the date of the preliminary hearing is not a matter of conduct for which any member of the RCMP had a responsibility. It is apparent, however, that there was some confusion between crown counsel and the court as to whether or not the preliminary hearing of the charge against Inusiq Shoo had been set for September 4, 1990. The discussion concerning these procedural matters took place while Kitty Nowdluk-Reynolds was in the courtroom, and when it appeared that there was a possibility that the preliminary hearing might be delayed until September 27, 1990, the complainant, understandably, became emotionally upset and had to be taken from the courtroom. Again the Commission finds that no effort was made or consideration given by Corporal Chisholm or by crown counsel or indeed by the court to explain to Kitty Nowdluk-Reynolds what was taking place or to enable her to instruct and be represented by counsel during the discussion of matters which had a direct bearing upon her involvement as a witness in the proceeding, or the charge for which she had been arrested and for which she was kept in custody. In these circumstances, her anxiety and distress are completely understandable.

During the time that Kitty Nowdluk-Reynolds was outside the courtroom following her emotional outburst, the court, crown counsel, and counsel for the accused made arrangements for the preliminary hearing to proceed on the afternoon of September 5, 1990. The transcript of those proceedings discloses that the court was prepared to make some change in the custodial disposition of Kitty Nowdluk-Reynolds, because the court recognized that, without some change, she would stay in the RCMP cell. The court ordered her detained because crown counsel was apparently unwilling to allow the complainant to be released. The Commission finds that the matter of the custody of

Kitty Nowdluk-Reynolds was an issue between the complainant and the court. Had the complainant been properly informed of her rights to counsel and assisted in retaining counsel, she may not have been detained. This was a matter for the court to consider, not the RCMP.

The Commission finds that Kitty Nowdluk-Reynolds was neither consulted nor informed about the arrangements to hold her in custody and without further explanation was returned in handcuffs to the RCMP cell where she spent the night. On returning to the cell, she again requested a shower, but she was advised that personnel were unavailable for this purpose. Instead she was given some hair shampoo and a wash cloth and told that she could have a sponge bath at the basin in the cell. The Commission finds that this lack of consideration for the comfort of Kitty Nowdluk-Reynolds, as well as for her constitutional rights, and the failure to consider her release so that she might spend the night with her family are inexcusable. The conduct of the RCMP members involved in these matters was less than appropriate.

4. On the morning of September 5, 1990, the accused, Inusiq Shoo, elected to stand trial in the Territorial Supreme Court. As a consequence, there was no longer any need for a preliminary hearing. On this occurrence, the court ordered the withdrawal of the charge for which Kitty Nowdluk-Reynolds had been arrested and ordered her release from custody. This still left the prospect that Kitty Nowdluk-Reynolds would be required to appear as a witness at the trial in the Supreme Court. While these proceedings were taking place in court, Kitty Nowdluk-Reynolds remained in the RCMP cell and was not informed of the change in her status until between one o'clock and two o'clock in the afternoon. At no time was she informed that her presence might again be required as a witness at the trial of Inusiq Shoo.

5. Kitty Nowdluk-Reynolds received the news of her release from custody from Father Andrew MacBeth. Corporal Chisholm believed it would be helpful for the complainant to have the support of Father MacBeth for this purpose and to assist her during the time that she remained in Iqaluit. As soon as the release of Kitty Nowdluk-Reynolds was ordered, Corporal Chisholm made arrangements for her to fly from Iqaluit to Yellowknife and thence to Vancouver. The Commission finds that the complainant was consulted with respect to these arrangements by Corporal Chisholm. However the Commission also finds that Corporal Chisholm improperly delegated his responsibilities by asking Father MacBeth to inform her of the circumstances surrounding her release.

6. The Commission finds that the unidentified member of the RCMP referred to in this complaint is Corporal W. J. Chisholm.

7. Corporal Chisholm displayed poor judgment when deciding to transport Kitty Nowdluk-Reynolds to the courthouse in the same vehicle as Inusiq Shoo. His experience and interest in the problems experienced by victims of crime should have influenced him to provide other means of conveyance. Failing the availability of personnel or a vehicle, Corporal Chisholm should have consulted with crown counsel and, if necessary, the court.

RECOMMENDATIONS:

1. The Commissioner of the RCMP, the Officer Commanding "G" Division, and Corporal Chisholm should each send to Kitty Nowdluk-Reynolds an explanation of the circumstances which governed the conduct of the members of the RCMP during September 4 and September 5, 1990, and should extend to her their apology for the distress which those circumstances caused.

2. The policies and procedures of the RCMP with respect to the care and transportation of persons in their custody should be reviewed and modified to take into account the special needs of persons who are victims of crime. When the RCMP have responsibility for the care and custody of a victim of crime, then that responsibility must take precedence over other custodial duties and must incorporate measures which will safe-guard the victim from unnecessary emotional stress such as that which may result from a sudden confrontation with the perpetrator of the crime. These procedures should form part of the programs for the care and assistance afforded to victims of crime by adopting the principle that those who are taken from their homes to conform to the requirements of the RCMP in the discharge of its duty are entitled to the protection of the RCMP until they are returned to their home environment.

3. The policies and procedures of the RCMP with respect to the hygienic needs of persons in custody should be reviewed and modified so that the cleanliness of persons in custody can be ensured.

4. During the time that a person is in the custody of the RCMP and not represented by counsel, a court liaison officer or other member having charge of the prisoner should keep the prisoner informed of proceedings or developments which affect the activities of the prisoner.

5. The policies and procedures of the RCMP should be modified to ensure that persons taken into custody are properly informed of the right to counsel and the availability of counsel. When such persons continue in the custody of the RCMP, they should be informed more than once of those rights.

6. The policies and procedures of the RCMP should be modified with respect to the manner in which travel assistance is provided for persons over whom the RCMP has responsibility and coordinated with arrangements made by other segments of the criminal justice system.

(F) Complaint No. 2000-PCC-90757

The complaint reads as follows:

> On September 6 [*sic*], 1990, Ms. Nowdluk was not given police protection to leave Iqaluit, NWT and return to Surrey, B.C., although RCMP Members had told her that they escorted and incarcerated her in order to protect her. When she left Iqaluit, she was asked to report to the RCMP Airport Detachment in Vancouver, B.C., where Members would be expecting her and would escort her safely to her residence in Surrey, B.C.
>
> At approximately 2230 hours, when Ms. Nowdluk arrived at the Vancouver Airport, she was told by the OIC of the Detachment that he was not expecting her and did not have the resources to have someone escort her. He asked one of the Members to walk Ms. Nowdluk to a local bus stop. Ms. Nowdluk was tired, scared and did not have money to take a taxi. She had to transfer buses and did not arrive home until 0130 hours.
>
> Ms. Nowdluk states that the OIC at Vancouver Airport displayed inconsiderate behaviour when he failed to ensure that she would return home safely and wishes to lodge a complaint against his conduct.

FINDINGS:

1. When Kitty Nowdluk-Reynolds learned on the afternoon of September 5, 1990 that she had been discharged from custody and that arrangements were being made for her return to Vancouver by a flight that would arrive at approximately 10:30 p.m., she expressed to Corporal Chisholm her serious concern about the availability of transportation from Vancouver International Airport to the Timberland Motel in Surrey. She had no access to private transportation, and it was her understanding that Corporal Chisholm would make arrangements with the RCMP at Vancouver International Airport to provide her with transportation. There is disagreement on this issue between the complainant and

Corporal Chisholm who testified that he had advised the complainant to seek the assistance of the RCMP Detachment Vancouver International Airport if she encountered any problem with regard to bus transportation. He also indicated to Kitty Nowdluk-Reynolds that he would make inquiries with respect to bus transportation in Vancouver and get a message to her. When Kitty Nowdluk-Reynolds arrived at the airport in Iqaluit with Father MacBeth, she received a message from an airline service employee that arrangements in Vancouver were "all set." The complainant took this message to mean that when she got to Vancouver she could go to the Airport Detachment and they would provide her with transportation. Corporal Chisholm says he meant to indicate that buses would be running. He also said that he advised Kitty Nowdluk-Reynolds as to the fare and the manner in which she could recover the fare from the Department of Justice.

The Commission finds that Corporal Chisholm made adequate provisions in Iqaluit for the complainant's support and protection subsequent to her release but made inadequate provision for the travel arrangements by which Kitty Nowdluk-Reynolds would return to her home from the Vancouver International Airport. The Corporal also failed to make certain that she understood the arrangements which he did make. Corporal Chisholm testified that he was concerned about the well-being of Kitty Nowdluk-Reynolds, that he had a good understanding of the emotional strain which is faced by victims and witnesses, and that she would be feeling alone and depressed and in need of support. Nonetheless, he proceeded to expedite her departure from Iqaluit without adequate safeguards for her well-being and for her personal sense of safety. In making the arrangements which he did, Corporal Chisholm made a number of unwarranted assumptions as to the availability of assistance for the complainant at Vancouver International Airport. He should have made more stringent efforts to confirm the accuracy of those assumptions and, at the very least, he should have made certain that the assurances given to Kitty Nowdluk-Reynolds were communicated to the RCMP Detachment Vancouver International Airport and notice given of her scheduled arrival in Vancouver.

2. When Kitty Nowdluk-Reynolds arrived at Vancouver, she presented herself at the RCMP Detachment Vancouver International Airport and learned that the officers on duty had no knowledge of her arrival, had received no request from Iqaluit to assist her, and had no means to provide her with transportation. Corporal Cull made efforts to determine whether other RCMP detachments could provide assistance, but none was available. Constable Gramuglia of the RCMP Detachment Vancouver International Airport assisted her to find a public transit bus which would take her to the vicinity of the Timberland Motel and saw her safely on board. She received no further assistance from the RCMP. In the course of her travels to the Timberland Motel, she was obliged to change buses at a suburban bus interchange which involved an extended wait at a

remote, deserted location unknown to her. During this time her anxiety increased to such a degree that she became physically ill. Eventually she boarded the second bus which took her to the Timberland Motel where she arrived at approximately 1:30 a.m. on September 6, 1990.

3. The Commission finds that the member of the RCMP referred to in the complaint as "the OIC at Vancouver Airport" was Corporal C. B. Cull (now retired) and that the only other member of the RCMP associated with this complaint is Constable G. Gramuglia.

4. The Commission finds that there is no evidence that RCMP members had told Kitty Nowdluk-Reynolds that she had been escorted and incarcerated for her protection, as alleged in the complaint, other than evidence that part of the rationale of Corporal Chisholm for enlisting the assistance of Father MacBeth was his concern for the complainant's safety while in Iqaluit.

5. The Commission finds that no notice was given to RCMP Detachment Vancouver International Airport of the expected arrival of Kitty Nowdluk-Reynolds and that, in the circumstances of that evening, Corporal Cull and Constable Gramuglia made reasonable efforts to assist in the travel arrangements which she required. The difficulties which the complainant then faced were not the consequence of improper conduct on the part of these two RCMP members but, rather, rest upon the inadequacy of the criminal justice system.

6. The Commission finds that, although Kitty Nowdluk-Reynolds had reason to complain about the adequacy of arrangements made for her transportation from Iqaluit to her home in Surrey, this specific complaint against Corporal Cull is unsubstantiated.

RECOMMENDATIONS:

1. When a member of the RCMP in one detachment offers a person over whom the RCMP has responsibility the assistance of another detachment, that member must communicate full particulars about the person to the officer in charge of the second detachment. The member of the RCMP who originates the request must obtain a response and confirm the availability of the assistance.

2. To the extent that the responsibility for witnesses may rest with crown counsel or some other agency, the Commissioner should conclude an arrangement with such agencies whereby the care and transportation of witnesses can be authorized by the RCMP and

confirmed to the appropriate officials in all cases when witnesses are in their custody or control.

3. The RCMP should adopt policies and procedures, to be applied universally, governing the standards of care and transportation to be accorded to witnesses who are in their custody or control.

V. THE COMPLAINTS AND THE PUBLIC INTEREST

The Commission finds it significant that when the Acting Chairman issued the order instituting this hearing to inquire into the complaints made by Kitty Nowdluk-Reynolds, he considered it advisable to do so in the public interest. His authority for this action is found in s. 45.43 of the RCMP Act. There is, accordingly, a distinction to be made between the nature and scope of this inquiry and one which would otherwise be conducted under s. 45.42 of the RCMP Act. In the latter instance, the scope of the inquiry would be limited to the specific complaint and to the conduct of members of the RCMP which gave rise to the complaint. However, the scope of this inquiry must, when the public interest requires, extend beyond the conduct of RCMP members and embrace issues which underlie, relate to, or are collateral to such conduct.

The evidence presented to the Commission at this hearing leaves no doubt that Kitty Nowdluk-Reynolds was twice a victim.

On June 7, 1990, she was the victim of a violent attack upon her person. She was knocked down, choked and beaten. She was sexually violated. She was emotionally assaulted. She was left to recover as best she might from the physical and mental trauma which she sustained.

These incidents activated the criminal justice system, and her attacker was arrested, charged, provided with counsel, brought before the court, and, having pleaded guilty, sentenced to imprisonment. The system provided for his needs. In this process, Kitty Nowdluk-Reynolds was an involuntary and unwilling participant, forced to serve the needs of the criminal justice system. The system did not provide for her needs.

In this process, she was again victimized.

On July 10, 1990, not having been consulted or interviewed by the RCMP or by crown counsel or in any way prepared for the role which the criminal justice system expected of her, including the ordeal of confronting her attacker in court, Kitty Nowdluk-Reynolds was served with a subpoena. The crown counsel had need of her attendance. The court ordered her to attend. The RCMP executed the order. No one in the criminal justice system inquired as to whether or not she was physically or emotionally capable of fulfilling the obligation imposed by the subpoena, or financially able to make her way from Surrey, British Columbia, to Iqaluit, Northwest Territories. Seemingly, no one cared.

Kitty Nowdluk-Reynolds did not respond to the subpoena and her failure to attend in Iqaluit offended the rules of the justice system. In the public interest, the Commission considers

that it is necessary to examine the circumstances surrounding that failure and, in the light of those circumstances, first to assess the course of conduct followed by Kitty Nowdluk-Reynolds and then to weigh the appropriateness of the action taken by the criminal justice system.

The Commission has found that within days of the sexual assault Kitty Nowdluk-Reynolds left Iqaluit and travelled across Canada with Robert Callaghan to take up residence in Surrey, British Columbia. With no one to counsel her or administer to her physical and mental needs other than Robert Callaghan, she suffered, as she continues to do, mental stress, fear, sleeplessness, nightmares, all the anxieties with which experienced police officers and those who work with victims of crime are familiar. No one from the criminal justice system made any determined effort to meet with her to ascertain the nature and extent of the damage which she had sustained during the sexual assault. No one from the criminal justice system made any determined effort to meet with her to ascertain what evidence she could provide in support of the charge against the perpetrator of the crime. No one made any determined effort to meet with her to explain to her what the criminal justice system would require of her, or to ascertain whether or not she was able - let alone willing - to do what the system demanded.

The only effort made was a request from the RCMP Detachment Iqaluit on June 26, 1990 to the RCMP Detachment Surrey to obtain a statement from her. This was not acted upon until August 9, 1990. On that day Corporal P. Juby, an officer experienced in dealing with victims of crime, had a telephone conversation with her from which he was able to conclude that she was an unwilling witness who would not return to Iqaluit to testify in the criminal proceedings unless compelled so to do. And no one, even at that late date, paused to consider whether or not steps should be taken to provide Kitty Nowdluk-Reynolds with counselling and assistance which might alleviate her distress and encourage her to assist the criminal justice system in the prosecution of the perpetrator of the crime, Inusiq Shoo.

Unbeknownst to Corporal Juby, Kitty Nowdluk-Reynolds had, on July 10, 1990, been served with a subpoena in a manner which, while technically correct, was insensitive to the needs and concerns of a victim of the crime. If he had known, he might have understood why she believed that she was being harassed by the RCMP.

The only support which Kitty Nowdluk-Reynolds had during this period was from Robert Callaghan and he, out of his love and affection for her, reached the ill-considered decision that he should fake a telephone conversation and lead Kitty Nowdluk-Reynolds to believe that her attendance at Iqaluit in response to the subpoena, while desirable, was not necessary. She heard him say, while apparently speaking on the telephone to the RCMP, "So, she doesn't have to go."

In these circumstances the Commission has no hesitation in finding that the decision of Kitty Nowdluk-Reynolds not to travel to Iqaluit in response to the subpoena was understandable and predictable.

But what was the reaction of the criminal justice system?

Without any inquiry into the reason for her not complying with the subpoena, crown counsel sought, and the court ordered, a warrant for the arrest of Kitty Nowdluk-Reynolds to compel her attendance, in custody, at Iqaluit. The warrant was executed eight days before the date on which her appearance was required even though, given ordinary circumstances, the total elapsed travel time between her home in Surrey, B.C. and Iqaluit was approximately 24 hours. Kitty Nowdluk-Reynolds was taken from her home, placed in handcuffs, jailed for five days and then escorted from Vancouver to Edmonton to Yellowknife, and then back to Edmonton, to Toronto, to Ottawa, and finally to Iqaluit. During this time she was kept in jail cells at RCMP Detachment Surrey, Lakeside Correctional Centre in Burnaby, B.C., RCMP Detachment Yellowknife, Ottawa City Jail, and RCMP Detachment Iqaluit.

Save for one brief and unproductive interview by duty counsel in Surrey, B.C., Kitty Nowdluk-Reynolds was unrepresented and, but for her meeting with victims' assistance personnel at RCMP Detachment Surrey, was uninformed of what was expected of her, what each day held for her, and when she might be released from custody.

The Commission concludes that the issuance of the warrant, the timing of the execution of the warrant, and the escort arrangements made for Kitty Nowdluk-Reynolds suited only the convenience of the criminal justice system and, in particular, the procedures used by the RCMP for the transport of persons in custody.

Upon her arrival in Iqaluit on September 4, 1990, the arrangements to transport Kitty Nowdluk-Reynolds to court, again to suit the convenience of the justice system and the RCMP, brought her face to face with her attacker. Then, once in court, she found that the court proceedings which she had been forced to attend might be delayed for days or perhaps weeks. Her emotional outburst in reaction to these events was understandable and should have surprised no one. But her outburst had but one result - the suggestion made by the court that she be released from custody overnight was declined by crown counsel. Kitty Nowdluk-Reynolds was not consulted on this matter affecting her personal interest, and no one bothered to assist her to obtain counsel who could represent her with respect to continuing custodial arrangements.

On the following day, when the processes of the criminal justice system no longer required her attendance, Kitty Nowdluk-Reynolds was released and arrangements were made by the RCMP for her to fly that same day, unescorted, from Iqaluit to Vancouver. The portion of

the trip from Vancouver International Airport to her home in Surrey was to be made by public transit bus. Having been forcibly taken from her home on July 28, 1990 to suit the convenience of the criminal justice system, she was released in Iqaluit, provided with an airline ticket, and left to find her own way home. Although she was led to believe by the RCMP in Iqaluit that she could rely upon the RCMP in Vancouver for any assistance that she might require, no one bothered to send a message to the RCMP Detachment Vancouver International Airport to advise them of this offer of assistance.

Given all the opportunities which these circumstances presented, the Commission finds that from the time the charges were laid against the perpetrator, Inusiq Shoo, the criminal justice system displayed a callous disregard for, and an insensitive reaction to the needs of the victim of the crime. It adopted procedures which were designed only for its convenience. The convenience and rights of Kitty Nowdluk-Reynolds were ignored.

The Commission, having heard and observed Kitty Nowdluk-Reynolds during the course of the hearing, recognized that she continues to suffer anxiety and distress. It may be pardoned for wondering which victimizing incident had the greater effect, the sexual attack on June 7, 1990 or the treatment accorded to her by the criminal justice system.

The Commission is of the view that the public interest in the functioning of the criminal justice system demands a quality of performance superior to that disclosed by the incidents experienced by Kitty Nowdluk-Reynolds.

How then can the public interest best be served?

The criminal justice system in Canada is comprised of four principal elements, namely, the police, the prosecutors, the courts, and the correctional services. Of these, the police occupy the dominant role. They are the first element activated following the commission of a crime. They undertake the investigation and participate in the laying of charges. They arrest the accused, and deliver the accused and witnesses required by the prosecutor to the court at the appointed time. In all of these activities, the police are subject to the constraints in the Criminal Code of Canada and the Canadian Charter of Rights and Freedoms, and to the demands for service required of them by the prosecutor and the court. The activities of the police are directed principally to the apprehension and conviction of the perpetrator of a crime. That is the essential function of the criminal justice system and its needs are seen to be paramount. All of the attention is focused upon the accused and the system makes provisions and allocates significant resources to meet the needs of the accused and the protection of his or her rights.

But the criminal justice system pays little heed to the needs and rights of the victim.

The historical development of the criminal justice system has its roots in the principle that the apprehension and punishment of a transgressor is undertaken by the Crown on behalf of all members of society, rather than by the victim. While the validity of this principle is beyond challenge, it has led to the development of attitudes and the use of procedures which ignore the deep and lasting physical and emotional impact which the crime has upon the victim, and the exacerbation of that impact as a result of the demands placed upon the victim by the criminal justice system in the pursuit of its objective. The system also ignores the needs and rights of other non-accused persons who are called upon to assist in the functioning of the system.

Since the police have, during all stages of the process from the commission of the crime to the conviction of the accused, the greatest involvement with the victim, the opportunity for sympathetic understanding and the demonstration of sensitivity in dealing with the victim of crime rests with them. Yet what the police must do is dictated by the duties which the criminal justice system imposes upon them, including demands made by the prosecutor and authorized by the court. The Commission is of the view that it is wrong, and not in the public interest, to expose the police to the process of public complaint and make them answerable for duties which the criminal justice requires them to fulfil. The manner in which the duty is performed may properly give rise to complaint, but not the duty itself. Such being the case, the role which the police discharge in the criminal justice system must carry with it the obligation to take such action as may be required to bring about changes by which the criminal justice system will better serve the public interest by taking into account the interest of the victim.

In the Northwest Territories, the Yukon, and eight of the ten Canadian provinces, it is the RCMP who, with the exception of a few urban communities, provide the police services. It is, therefore, the RCMP which is best positioned to take the leading role in the development of policies and procedures which will ensure that the criminal justice system takes into account and accommodates the legitimate interests and the welfare of victims and other persons whose involvement is necessary to the effective functioning of the criminal justice system.

RECOMMENDATIONS:

The universality of the issues arising from the involvement of victims and other non-accused persons in the criminal justice system suggests that policies and procedures must be developed which are capable of implementation in all jurisdictions in Canada. It is therefore recommended that the Commissioner of the RCMP and the commanding officers of the several Divisions of the RCMP undertake the development of policies and the design of

procedures which, in the light of their experience throughout Canada, will accommodate the needs of the criminal justice system while, at the same time, ensuring that:

1. at the earliest moment after commencing the investigation of a crime, the police provide or make available to the victim a level of victim's assistance services which respond to the nature and consequences of the crime and the impact thereof upon the victim;

2. from time to time during the course of the investigation and thereafter throughout the subsequent criminal proceedings, the victim is informed of developments at each stage of the process;

3. the victim and any other person required to assist in the investigation or to give evidence at any court proceeding is counselled with respect to the nature of the proceeding and the extent to which he or she is required to participate;

4. when a subpoena or other court order is used for the purpose of ensuring the attendance of any person at court proceedings, clear advice is given to that person at the moment of service with respect to his or her legal obligation and such assistance as may be required;

5. upon the termination of the proceedings, the victim is informed of the disposition of the charge and of the accused person;

6. the requirements of the criminal justice system are capable of being, and will be, clearly understood. In this respect, the practices and procedures must take fully into account the variety of persons with whom those responsible for the administration of the system must communicate and the impediments which exist in a multi-cultural and multi-linguistic society;

7. the policies, procedures and practices adopted are applied, consistently, throughout all of the jurisdictions in Canada.

The development of these policies and the design of these practices should be undertaken in consultation with representatives of the Ministers of Justice and Attorneys General throughout Canada. Once the policies and practices and the means of their implementation have been settled among the RCMP, other police services, and prosecutorial officials, steps should be taken to coordinate their implementation with the judiciary in order that proceedings which come before the courts may be conducted in a manner which will best accommodate the needs of the victim and those other persons who are obliged to participate in the criminal justice system.

In making this recommendation, the Commission is not unmindful of the impact which these practices may have upon the resources available to the police, prosecutors, and the courts. However, the changes which the Commission envisages for the criminal justice system should serve to reduce rather than increase the demand upon resources.

Hopefully the changes to be implemented will avoid the commitment of financial and other resources which were consumed - perhaps wasted is a better word - in pursuing the complaints arising from the failure of the criminal justice system to recognize and make allowances for the needs of Kitty Nowdluk-Reynolds.

Balancing all of these factors, and recognizing the growing ethnic, linguistic and cultural diversity in Canada, the RCMP, as a central component in the criminal justice system, must take the lead in implementing innovative and thoughtful provisions which will accommodate the needs of both the criminal justice system and the individual upon whom the functioning of the system depends. In this way the public interest will be served.

* * * * *

APPENDIX "A"

REPORT FROM INSPECTOR E. G. DENNIS, RCMP "G" DIVISION, TO KITTY NOWDLUK-REYNOLDS

APPENDIX "A"

The following is the text of a letter dated February 21, 1991 sent to the complainant by RCMP "G" Division. This letter was returned, undelivered, and was again sent to the complainant under separate cover on March 21, 1991.

February 21, 1991

Ms. Kitty Nowdluk
#2, 3418 King George Hwy.
Surrey, B.C.
V4A 5B5

Dear Ms. Nowdluk:

Re: Public Complaint against RCMP
Yellowknife and Iqaluit, NWT
October 29, 1990

Further to my previous correspondence to you dated February 1, 1991, this is to inform you that the internal investigation into your public complaint has been completed and in accordance with Section 45.4 of the RCMP Act 1986, this is my final report to you.

One of our senior investigators conducted a thorough and impartial investigation into your allegations against members of the RCMP in the Northwest Territories.

To summarize your complaint, you alleged to the RCMP Public Complaints Commission on October 29, 1990 that:

1) an unidentified member misinformed you that nothing would happen if you did not appear in court;

2) that Special Constable TETSO was negligent in the performance of her duties when she caused you to miss a direct flight to Iqaluit;

3) that an unidentified member of Iqaluit Detachment displayed inconsiderate behaviour and did not allow you time to shower;

4) that an unidentified member of Iqaluit Detachment displayed inconsiderate behaviour and transported you in the same vehicle as her (sic) assailant; and

5) that an unidentified member of Iqaluit Detachment displayed inconsiderate behaviour and failed to keep you informed of the time you would be released.

A summary of the investigation revealed that on July 23, 1990, Robert CALLAGHAN telephoned the RCMP office in Iqaluit to determine the consequences of you not appearing in court.

On July 30, 1990, you failed to appear for the preliminary inquiry and a form 17, Warrant, was issued. The accused Inusiq SHOO was remanded in custody and the preliminary inquiry was adjourned until September 09, 1990. It was also learned that you were charged with Contempt of Court under Sec. 708(1) CC.

On August 28, 1990, you were arrested by an RCMP member at Surrey, BC on authority of the warrant issued at Iqaluit, NWT. Arrangements were made to have you returned to Iqaluit via commercial airlines. On September 2, 1990, S/Cst. TETSO of Yellowknife Detachment escorted you from Burnaby, BC to Yellowknife, NWT. S/Cst. TETSO missed the flight, thus other arrangements had to be made to take you to Iqaluit via Toronto and Ottawa.

When you arrived at Iqaluit at 1315 hours on September 04, 1990, you were immediately taken to the RCMP guardroom and booked in the cells. At 1340 hours you were placed in the rear passenger compartment of the police vehicle with a matron. Your assailant SHOO was picked up at the Baffin Correctional Centre, placed in the prisoner compartment and taken to the court house which was approximately 2.4 k's away, or a four minute ride in the police vehicle.

As there are no separate holding facilities at the courthouse, special arrangements were made to separate you and SHOO until your court appearance as you were still in custody. Further investigation revealed that when you did appear in court, you were abusive and disruptive thus the Judge ordered that you be held in custody until required by the court. At this time the preliminary inquiry was adjourned to September 05, 1990.

At that point, you were returned to the detachment cells in accordance with the Judge's instructions and was (sic) given every consideration that a prisoner is entitled too (sic).

The preliminary hearing continued the next morning and you remained in the cells in compliance with the Judge's instructions. Your assailant SHOO entered a guilty plea and was remanded in custody for sentencing. Cst. CHISHOLM took SHOO to the Baffin Correction Centre, returned to the detachment and then immediately arranged for your release as instructed by the Court.

It was learned that you were released from the cells at 1400 hours and provided with transportation while you attended to personal and social needs.

Reverend Father Andrew MacBETH assisted you in this regard and took you to the Iqaluit airport for your 1630 hour flight on the same day. Father MacBETH stayed with you at the airport until you left Iqaluit via commercial airlines.

With regard to your allegation that an unidentified member misinformed you that nothing would happen if you did not appear in court, the following facts and explanation are submitted.

All of the RCMP members that were working on July 23, 1990, when Robert CALLAGHAN called to inquire about the consequences of you not appearing in court, were interviewed. All the members provided statements to the effect that they could not recall a conversation as described by CALLAGHAN, or in fact, that it actually occurred.

Mr. CALLAGHAN advised that he spoke to a Cst. Peter "somebody", and it was a french sounding name. It is quite possible this was a Cst. J.O.M. BEAUDOIN, as he was the investigator on the criminal file dealing with your assault until his transfer to Hall Beach, NWT. Cst. BEAUDOIN was interviewed with regard to this allegation and he advised that he does not remember speaking to Mr. CALLAGHAN at no (sic) time throughout the investigation. There is no documentation on the file and Cst. BEAUDOIN is quite adamant that if he had spoken to CALLAGHAN it would have been recorded on the file. Cst. BEAUDOIN further states that he is fully aware of one's requirement when subpoenaed for a court case and would have informed Mr. CALLAGHAN properly that your presence at the preliminary hearing was definitely a must.

Further to the above, it was learned that persons failing to answer to a summons/subpoena has been a problem in Iqaluit and it is inconceivable that a member would "not be certain regarding this information."

As a result of the above information, this allegation cannot be confirmed nor denied.

With regard to your allegation that S/Cst. TETSO was negligent in the performance of her duties when she missed your escort flight to Iqaluit, the following facts and explanation are submitted.

Our investigation did in fact reveal that S/Cst. TETSO was tardy and missed the flight that was to take you to Iqaluit. As a result, alternate arrangements were quickly made via Toronto and Ottawa to escort you to Iqaluit for the preliminary hearing.

This matter was brought to the attention of S/Cst. TETSO and she was advised that her conduct in this matter was not acceptable. Appropriate internal action and guidance has been taken with S/Cst. TETSO.

Due to the provisions of the Privacy Act which prohibits the release of personal information about a member, I am not permitted to disclose the nature of the internal action which was administered.

With regard to your allegation that an unidentified member of Iqaluit Detachment displayed inconsiderate behaviour and did not allow you to shower, the following facts and explanation is provided.

Our investigation into this allegation revealed that when you arrived at Iqaluit, you were booked into the RCMP cells at 1315 hours, September 04, 1990. As there was a delay in your initial arrival and the fact the court was waiting for your appearance, at 1340 hours you were taken to the court house. This is confirmed by your prisoner report, the prisoner log at Iqaluit Detachment and statements from Cst. CHISHOLM and the RCMP matron.

As the court had already been delayed and the fact that the Court controlled the scheduling and requested your appearance immediately, there was no time for a shower. It was also learned that you did not request a shower at this time and there was no reason to believe that you needed one. Our prisoner log indicated that you were booked back in the RCMP cells at 1800 hours.

During this stay in the cells you requested some personal items which were given to you by the matron on duty. At 2230 hours you requested to have a shower and due to the fact there were no RCMP members available to supervise, this request could not be granted. It should be noted that guards and matrons are not allowed to release prisoners to the shower area unless there is an RCMP member present. For whatever the circumstances you could not be accommodated at that time, however our matron provided you with the items that allowed you to have a sponge bath.

In view of the above, I find that our members and matron treated you in a proper manner while you were in the confines of the RCMP Iqaluit cells. If a member was available to supervise your removal from the cells to the shower area this request would have been granted.

With regard to your allegation that an unidentified member of Iqaluit Detachment displayed inconsiderate behaviour and transported you in the same vehicle as your assailant, the following facts and explanation is submitted.

Cst. CHISHOLM was the member responsible for your attendance in court. As the matter had been delayed four hours awaiting your arrival and the accused ha been held in custody for an additional month as a result of your non-appearance, the Court did not want any further delays. Cst. CHISHOLM advised you that your assailant SHOO would be in the same vehicle as you. You would be in the rear passenger seat with the matron and SHOO would be in the prisoner compartment in the back of the police vehicle. Cst. CHISHOLM requested that you look straight ahead and not talk to him.

You then left the RCMP office via police transport and proceeded to the Baffin Correctional Centre at which time SHOO was picked up, handcuffed and placed in the rear of the police vehicle. Cst. CHISHOLM advised that when he started to drive to the court house you turned around and tried to speak to SHOO. Cst. CHISHOLM told you not to

do so, so you turned around and sat facing forward. Once at the court house you were separated from your assistant (sic) and there was no further contact.

Transportation of male and female prisoners in the same vehicle is a normal procedure and is not contrary to any policy when separate compartments are used. This was a different case in that even though you were a prisoner of the Court, you were also a victim.

Because of the delay of the proceeding and there was an urgency in getting you to court, thus this procedure was utilized with the only member and vehicle available.

Cst. CHISHOLM was fully aware of the potential for confrontation and warned you what to expect. Your assailant had also been warned by Cst. CHISHOLM not to have any eye contact or conversation with you.

With regard to all the circumstances, the transportation of you and your assailant was completed in the most efficient and possible way at the time. However, even though our member showed concern for you at your time of distress, I feel that he should not have transported you in the same vehicle as your assailant.

This matter was brought to the attention of Cst. CHISHOLM and he was advised that his conduct in this matter was not acceptable. Appropriate internal action and guidance has been taken with Cst. CHISHOLM.

Due to the provisions of the Privacy Act which prohibits the release of personal information about a member, I am not permitted to disclose the nature of the internal action which was administered.

With regard to your allegation that an unidentified member of Iqaluit Detachment displayed inconsiderate behaviour and failed to keep you informed of the time you would be released, the following fact and explanation is submitted.

After your appearance in court on September 04, 1990, you were remanded in custody and held at the RCMP Detachment cells. On the morning of September 05, 1990, you were not required in court so you remained at the detachment cells while the case against your assailant SHOO was heard. At that point SHOO changed his plea to guilty and was remanded in custody for sentencing. The Court then instructed the RCMP that you could be released. Cst. CHISHOLM returned to the office and proceeded to make travel arrangements for your return to BC. Father Andy MacBETH was at the RCMP office for his usual weekly visit. Cst. CHISHOLM asked Father MacBETH if he would like to give some good news to a prisoner for a change and explained your circumstances to him. Cst. CHISHOLM explained the travel arrangements to Father MacBETH and Father MacBETH stated he would look after you until your departure. After Cst. CHISHOLM explained the travel arrangement to you, you were released and departed with Father MacBETH at 1400 hours.

Father MacBETH provided a statement for this investigation and confirms Cst. CHISHOLM's facts regarding the aforementioned. Father MacBETH stated that his weekly

visits are part of his pastoral duties and that he was happy to be able to bring you the good news, drive you around Iqaluit so you could attend to your personal needs and eventually take you to the airport and watch you board the aircraft.

In view of the circumstances presented, I feel that our member had no control over what time the Court was going to release you. Once the court case was finished, you were immediately released, travel arrangements were completed and Father MacBETH stated he would be happy to look after you until your departure by commercial airlines. If you objected to the fact that priest assisted you after your arrest, you should have objected at that time. Father MacBETH stated that you were quire receptive to him and his offer for assistance.

It should be noted that this assistance is part of the victims services program in place in Iqaluit, NWT, and the fact that the RCMP were concerned about your safety and well being while you remained in Iqaluit.

Thank you for bring this matter to my attention. If the tardiness on the part of Cst. TETSO and the misunderstanding on the part of Cst. CHISHOLM by allowing you to ride to court with your assailant caused you any unnecessary discomfort or grief, kindly accept my apology for our members wrongdoings. I can assure you that Cst. TETSO and Cst. CHISHOLM are fully aware of their mistakes and this will not happen again.

I trust you (sic) public complaint has been handled in a manner which is entirely to your satisfaction. If you are not satisfied with the investigation of your complaint, you have the right to express your concerns by telephoning 1-800-267-6637, or by writing to:

The RCMP Public Complaints Commission
P.O. Box 3423
Postal Station "D"
Ottawa, Ontario
K1P 6L4

Yours truly,

E.G. DENNIS, Inspector
Officer in Charge
Administration & Personnel
"G" Division

APPENDIX "B"

REPORT FROM SUPERINTENDENT W. R. RING, RCMP "E" DIVISION, TO KITTY NOWDLUK-REYNOLDS

APPENDIX "B"

The following is the text of a letter dated March 4, 1991 sent to the complainant by "E" Division RCMP:

March 4, 1991

Ms. Kitty Nowdluk
Timberline Motel
3418 King George Highway
Surrey, B.C.
V4A 5B5

Dear Ms. Nowdluk:

This is in reference to your complaint that you were not provided with details on travel arrangements to Iqaluit, N.W.T., that you were treated in a prejudicial manner and that you were not provided a ride home from the airport by members of the R.C.M.P.

The investigation into this matter has now been completed and I have had an opportunity to review the final report. As your complaint entails four different allegations, I will address each of them separately.

Your first allegation is that Cst. Anderson failed to provide you with details of the travel arrangements made on your behalf by the Department of Justice, when she served you with a subpoena.

Both you and your common-law husband indicate that Cst. Anderson removed a typed letter and a postcard sized card from the subpoena before serving you with that document. You were unable to provide any details on what this removed correspondence may have involved.

Cst. Anderson was questioned with regard to any knowledge she had on any travel arrangements. She advises that she does not recall any documentation involving travel arrangements being given to her for service. A check of the original files gives no indication that anything other than the subpoena was received at Surrey Detachment.

Inquiries were also made with Iqaluit Detachment and Yellowknife Regional Crown Counsel's office but neither of these agencies could confirm whether or not the travel arrangement documents were ever forwarded to Surrey Detachment for service. I am therefore unable to determine what happened to the travel arrangement information. There is insufficient evidence to support your allegation against Cst. Anderson.

Your second complaint is that members of the Vancouver International Airport Detachment were inconsiderate when they failed to provide you with transportation from the airport to your residence in Surrey.

Investigation has revealed that upon receiving your request for transportation to Surrey, Cpl. Cull contacted Surrey Detachment members and attempted to accommodate your request. Surrey Detachment personnel were unavailable to render this assistance and Cpl. Cull was functioning with an understaffed Airport Detachment as well. He was therefore unable to provide you with this service. Cst. Gramuglia carried your luggage to the nearby bus stop and ensured that you were placed safely aboard. He also provided you with 60 cents out of his own pocket to assist you with the required bus fare as you did not have sufficient small change.

Cst. Chisholm was questioned with regard to any promises he may or may not have made to you with regard to providing police transportation to you. He advises that he made no such guarantee to you. He merely checked with you to ensure that you had sufficient funds on your person to be able to afford bus fare. It is my determination that Cpl. Cull and Cst. Gramuglia were more than accommodating in their attempts to assist you. No breach of the R.C.M.P.'s Code of Conduct occurred.

Your third allegation is that Cst. Davidson's attitude changed and became prejudicial once he realized you were an Inuit[1].

Investigation has revealed that Cst. Davidson was aware that you were Inuit prior to his arrival at your residence as your description was provided to him as part of the Warrant printout.

Your claim is also undermined by the fact that Cst. Davidson chose not to lay assault charges against you, relating to the physical confrontation that occurred when he advised you that you were under arrest. Cst. Davidson, of his own volition, also arranged to have a Victim-Witness Services person attend to you while you were in cells because he sympathized with the situation in which you found yourself. These are not the actions of a racially prejudiced individual.

Your fourth allegation is that Cst. Davidson failed to advise you of your right to obtain legal counsel.

Cst. Davidson was questioned in this regard and is adamant that you were properly Warned and Chartered at the time of your arrest. A review of the original investigative file includes

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[1] *The Force's letter of March 4, 1991 refers to Ms. Nowdluk-Reynolds as a "Native Indian." Ms. Nowdluk-Reynolds is an Inuit. This error was corrected by letter dated March 14, 1991. The foregoing text incorporates this correction.*

a written record that you were provided with these legal requirements. I am not prepared to find Cst. Davidson in breach of the R.C.M.P.'s Code of Conduct in this instance.

Should you be dissatisfied with the findings of this investigation, you may request a review by contacting:

The R.C.M.P. Public Complaints Commission
British Columbia & Yukon Regional Office
Robson Court Building
Suite 970 - 840 Howe Street
Vancouver, B.C. V6Z 2L2
Telephone: (604) 666-7363

Yours truly,

W. L. Ring, Superintendent
Acting Office in Charge
Administration & Personnel
"E" Division

APPENDIX "C"

ORDERS MADE BY THE COMMISSION
PRIOR TO THE COMMENCEMENT OF THE HEARING

THE RCMP PUBLIC COMPLAINTS COMMISSION

IN THE MATTER OF THE RCMP ACT, PART VII;

AND IN THE MATTER OF A HEARING TO INQUIRE INTO THE COMPLAINTS OF MS. KITTY NOWDLUK-REYNOLDS, COMPLAINT NOS. 2000-PCC-90721, 2000-PCC-90753, 2000-PCC-90754, 2000-PCC-90755, 2000-PCC-90756, 2000-PCC-90757

ORDER CONCERNING ELECTRONIC
OR PHOTOGRAPHIC
RECORDING OF THE PROCEEDINGS

1. Television cameras, other cameras and electronic recording devices will not be permitted in the hearing room except during the formal opening of the hearing.

2. This prohibition does not apply to the official reporter who is recording the proceedings for the purpose of preparing a transcript of the hearings or to any official interpreter who is recording the proceedings in connection with interpreting the proceedings into another language under the direction of the Commission.

DATED at Vancouver this 17th day of February, 1992.

BY ORDER OF THE COMMISSION

"Allan Williams"
L. ALLAN WILLIAMS, Q.C.
CHAIRMAN

THE RCMP PUBLIC COMPLAINTS COMMISSION

IN THE MATTER OF THE RCMP ACT, PART VII;

AND IN THE MATTER OF A HEARING TO INQUIRE INTO THE COMPLAINTS OF MS. KITTY NOWDLUK-REYNOLDS, COMPLAINT NOS. 2000-PCC-90721, 2000-PCC-90753, 2000-PCC-90754, 2000-PCC-90755, 2000-PCC-90756, 2000-PCC-90757

ORDER

WHEREAS it is in the interest of the fair, orderly, and expeditious conduct of this inquiry that parties and other persons who satisfy the Commission that they have a substantial and direct interest in the Complaints have access in advance of the hearing to information in the possession of Commission ("Commission Information") concerning the complaints which are the subject of this inquiry, whether or not such information is admissible as or is admitted as evidence at the hearing of these complaints (hereinafter referred to in this Order by the term "prehearing disclosure" or similar term);

AND WHEREAS it is essential to the credibility of the inquiry that Commission Information obtained through prehearing disclosure be made available to the parties and other qualifying persons only for their use in preparation for and conduct of the hearing, and not for publication or disclosure;

THEREFORE the Commission orders:

1. Commission counsel is authorized to make prehearing disclosure of Commission Information to parties or other qualifying persons or their counsel upon the receipt of an acknowledgement and undertaking in the form attached hereto as Schedule 1.

2. Publication or disclosure of Commission information by any person, directly or indirectly, by any means whether such Commission Information has come into the possession of such person by way of prehearing disclosure in accordance with this Order or otherwise is prohibited.

3. Counsel receiving Commission Information by way of prehearing disclosure in accordance with this Order shall communicate and explain the terms of this Order to the persons whom they represent.

DATED at Vancouver this 17th day of February, 1992.

BY ORDER OF THE COMMISSION,

"Allan Williams"
L. ALLAN WILLIAMS, Q.C.
CHAIRMAN

NOTICE: Contempt of an order of the Commission constitutes an offence punishable on summary conviction pursuant to Section 50 of the RCMP Act.

SCHEDULE 1

THE RCMP PUBLIC COMPLAINTS COMMISSION

IN THE MATTER OF THE RCMP ACT, PART VII;

AND IN THE MATTER OF A HEARING TO INQUIRE INTO THE COMPLAINTS OF MS. KITTY NOWDLUK-REYNOLDS, COMPLAINT NOS. 2000-PCC-90721, 2000-PCC-90753, 2000-PCC-90754, 2000-PCC-90755, 2000-PCC-90756, 2000-PCC-90757

ACKNOWLEDGMENT AND UNDERTAKING

The undersigned, a party or a person who has satisfied the Commission as having a substantial and direct interest in the complaints before this inquiry, or counsel acting on behalf of such party or person, hereby:

1. acknowledges receipt of the Order of the Commission providing for prehearing disclosure of Commission Information;

2. undertakes to receive Commission Information obtained through prehearing disclosure for use only in the preparation for and the conduct of the hearing and for no other purpose;

3. acknowledges that prehearing disclosure of Commission Information does not constitute public disclosure and that the disclosure or publication, directly or indirectly, by any means including to the news media is prohibited until such time as the Commission Information is received in evidence by the Commission in the hearing to inquire into these complaints;

4. undertakes, where this acknowledgment and undertaking is given by counsel on behalf of a party or other qualifying person, to communicate and explain to the person represented by such counsel the terms of the Commission's Order providing for prehearing disclosure.

DATED this day of , 1992.

SIGNATURE OF PARTY OR QUALIFYING PERSON, OR COUNSEL

PRINT NAME OF PARTY OR THE PERSON

PRINT NAME OF COUNSEL

NOTICE: Contempt of an order of the Commission constitutes an offence punishable on summary conviction pursuant to Section 50 of the RCMP Act.

THE RCMP PUBLIC COMPLAINTS COMMISSION

IN THE MATTER OF THE RCMP ACT, PART VII;

AND IN THE MATTER OF A HEARING TO INQUIRE INTO THE COMPLAINTS OF MS. KITTY NOWDLUK-REYNOLDS, COMPLAINT NOS. 2000-PCC-90721, 2000-PCC-90753, 2000-PCC-90754, 2000-PCC-90755, 2000-PCC-90756, 2000-PCC-90757

ORDER AUTHORIZING THE APPOINTMENT OF A PERSON TO TAKE EVIDENCE ON OATH OR AFFIRMATION

UPON THE APPLICATION of Commission counsel and upon notice being given to the parties in this matter, and there being no objection by any party the Commission orders that:

1. The Chairman is authorized to appoint a person to take, at a convenient time and place in or about the City of Vancouver, British Columbia, on oath or affirmation, the evidence of:

Betty Smith
Corporal P. Juby
J. B. Cull (Corporal, ret.)
Corporal J. Coldham

and their answers to the several questions that may be put to each of them by the parties herein, and to receive such books, records and documents as they may produce pertaining to the within matter.

2. Each witness whose evidence is to be taken shall swear or affirm as follows:

> You swear (or affirm) that the evidence to be given by you touching the matters which are the subject of the inquiry here, shall be the truth, the whole truth and nothing but the truth. (In an oath, conclude: So help you God.)

3. The person who records and transcribes the evidence shall take the following oath or affirmation:

> I swear (or affirm) that I will truly and faithfully record and transcribe all questions put to all witnesses and their answers thereto in accordance with the directions of the Examiner. (In an oath, conclude: So help me God.)

4. On the request of Commission counsel or any party, arrangements may be made to record the evidence of any witness on video or aural tape at the expense of such party. The original copy of any such tape shall be delivered to Commission counsel upon the completion of the taking of the evidence and safely kept until delivered with the transcript any books, records and documents produced during the taking of the evidence as required by paragraph 8 hereof. Any party hereto is entitled to have a copy of any tape made at their own expense.

5. The examination of each witness shall be conducted by Commission counsel, and any party or counsel for any party shall be entitled to be present when the evidence is taken and to cross examine the witness, and inspect such exhibits as may be produced relating to the matters herein.

6. When during the examination of any witness an objection is taken to the asking of any question or the answering thereof, the question may be asked and, if asked, shall be answered, and the admissibility of the answer shall be determined by the Commission at the hearing prior to the introduction of the question and the answer as evidence in the inquiry.

7. Upon the completion of the taking of the evidence of each of the persons aforesaid, the transcript thereof shall be signed by the person who recorded or transcribed the evidence confirming that the evidence has been taken by such person

and that the transcription thereof is accurate, and the transcription and all exhibits shall be delivered to Commission counsel.

8. The Commission counsel shall present to the Registrar at the commencement of the hearing of the inquiry all of the tapes, transcriptions and exhibits received in accordance with paragraph 4 and 7.

9. The introduction of the evidence of any witness taken in accordance with this Order shall be on application made to the Commission at the hearing and shall be subject to the objection, if any, of any party and the ruling of the Commission upon such application.

10. The Commission shall pay the reasonable travelling expenses of each witness who attends before the Examiner.

DATED at Vancouver, British Columbia this 28th day of February, 1992.

BY ORDER OR THE COMMISSION

"Allan Williams"
L. A. Williams, Q.C.
Chairman

THE RCMP PUBLIC COMPLAINTS COMMISSION

IN THE MATTER OF THE RCMP ACT, PART VII;

AND IN THE MATTER OF A HEARING TO INQUIRE INTO THE COMPLAINTS OF MS. KITTY NOWDLUK-REYNOLDS, COMPLAINT NOS. 2000-PCC-90721, 2000-PCC-90753, 2000-PCC-90754, 2000-PCC-90755, 2000-PCC-90756, 2000-PCC-90757

ORDER

Upon considering the application of James W. Williams, Barrister, on behalf of Constable Carlos Gramuglia dated March 6, 1992;

And upon considering the representation of N. J. Schultz, Commission counsel, as to the likely involvement of Constable Carlos Gramuglia in the evidence to be presented in the hearing of the complaints;

IT IS ORDERED that the Commission is satisfied that Constable Carlos Gramuglia is a person who has a substantial and direct interest in these complaints and is entitled to all of the rights provided under Section 45.45(5) of the RCMP Act.

DATED at Vancouver, British Columbia this 6th day of March, 1992.

BY ORDER OF THE COMMISSION

"Allan Williams"
L. A. Williams, Q.C.
Chairman

APPENDIX "D"

RULINGS MADE BY THE COMMISSION DURING THE COURSE OF THE HEARING

APPENDIX "D-1"

JURISDICTION OF THE COMMISSION IN RESPECT OF THE CONDUCT OF A RETIRED MEMBER OF THE RCMP

APPENDIX D-1

JURISDICTION OF THE COMMISSION IN RESPECT OF THE CONDUCT OF A RETIRED MEMBER OF THE RCMP

STATUS OF CORPORAL C. B. CULL (RETIRED)

On March 23, 1992, David Gates, counsel for the appropriate officer of RCMP "E" Division questioned the jurisdiction of the Commission to accord the status of a "party" to Corporal C. B. Cull (retired) and to make findings and recommendations with respect to his conduct. Mr. Gates stipulated that Mr. Cull voluntarily retired from the RCMP on July 31, 1991. It is accepted that this date was subsequent to the date on which complaints were made by Kitty Nowdluk-Reynolds, subsequent to the date on which those complaints were investigated by the Commissioner of the RCMP, subsequent to the dates upon which the RCMP reported to Kitty Nowdluk-Reynolds with respect to those complaints, but prior to the date of the notice of the decision of the Acting Chairman of the Commission to institute this hearing.

It was the submission of Mr. Gates that the sections of Part VII of the RCMP Act, which embrace all the matters concerning public complaints, pertain only to persons who are "members" of the RCMP, or are, "persons appointed or employed under the authority of the Act." He further submitted that since the Act defined a "member" as being a person appointed under the Act who has not been discharged from the Force, and that, in accordance with the regulations and the standing orders of the Commissioner, a person who has voluntarily retired is equated with a person who has been discharged, Mr. Cull ceased to be a member on July 31, 1991. Hence, as of that date, he ceased to qualify as a "party" for the purposes of Part VII of the Act. He further submitted that Part VII conferred no authority on the Commission to deal with a complaint in relation to the conduct of that retired person while he or she was a "member."

Mr. Gates pointed out that in the circumstances any recommendation contained in a report made by the Commission following the inquiry requiring the Commissioner to take any action such as training, the making of an apology or some disciplinary procedure, in respect of a person who had ceased to be a member would be without effect since the Commissioner could exercise no authority or control over that person.

Mr. Gates acknowledged that his submission leads to the anomaly that the conduct of a person who was a member of the RCMP at the time of an incident giving rise to a complaint could be the subject of an inquiry up to but not after a voluntary retirement of that person regardless of the stage reached by the inquiry at the date of retirement.

Mr. Gates further acknowledged that the acceptance of his submission with regard to the status of Mr. Cull as a "party" does not mean that he does not have a substantial and direct interest in the outcome of this inquiry and accordingly is a person entitled under section 45.45(5) to be given the right, in person or by counsel, to present evidence, cross-examine witnesses and make representations at the hearing.

In concluding his submission, Mr. Gates informed the Commission that this issue is currently before the Federal Court of Canada in a separate proceeding arising from another complaint within the scope of Part VII of the Act. However, that issue arose in circumstances where the retirement preceded the lodging of the complaint.

In response to this submission, Mr. J. Harris, counsel for Mr. Cull, advanced the proposition that regardless of the status of his client as a "member," he remains a "party" in these proceedings and therefore the Commission is entitled to make such "findings" about his conduct as the evidence may support. He also submitted that Mr. Cull was a person with a substantial and direct interest in the matter but that the making of "findings" does not depend upon Mr. Cull's entitlement to recognition under section 45.45(5) of the Act.

Mr. Harris acknowledged that the retirement of his client placed him beyond the authority of the Commissioner and therefore might render ineffective any "recommendations" which the Commission might make.

Mr. N. Schultz, counsel to the Commission, submitted that whatever interpretation the Federal Court of Canada might put upon the jurisdiction of the Commission to initiate or continue an inquiry into the conduct of a retired member of the RCMP, Mr. Cull nonetheless remains a person with a substantial and direct interest and, on that basis alone, has a status equivalent to a "party" in this inquiry. Such being the case, the Commission can hear evidence from Mr. Cull as to his role in any of the complaints, and he may instruct his counsel to cross-examine witnesses and make submissions on his behalf. In the circumstances, the Commission, in its report following the completion of the inquiry, could make such "findings" about the involvement of Mr. Cull in the allegations and the complaints as the evidence may disclose.

The Commission recognized that it could defer a decision on this jurisdictional matter until the decision of the Federal Court of Canada was received. To do so would necessitate deferral until any appeal from that decision was concluded. The Commission was of the opinion, however, that such deferral would be inappropriate and that the purpose for which Part VII of the Act was enacted would be frustrated if the Commission acceded to the challenge made to its jurisdiction in this inquiry because of the retirement of Mr. Cull as a member of the RCMP.

The Commission ruled that Mr. Cull enjoyed the status of a "party" and did not lose that status because of his retirement during the course of proceedings under Part VII of the RCMP Act.

In making this ruling, the Commission acknowledged that any recommended action it might make which was directed at Mr. Cull could be beyond the authority of the Commissioner to implement. Nevertheless, this fact does not inhibit the Commission from making "findings" nor such recommendations as appropriately flow from those findings. In reaching this conclusion, the Commission recognized that its "findings" and "recommendations" flowing from the conduct of Mr. Cull might be essential if the Commission is to clarify, answer, or resolve allegations in a complaint based upon his conduct as well as the conduct of other persons who are parties to the proceedings. The Commission could not avoid such references in its report of the inquiry.

APPENDIX "D-2"

CHALLENGE TO THE STATUS OF COUNSEL FOR THE APPROPRIATE OFFICERS - CONFLICT OF INTEREST

APPENDIX D-2

CHALLENGE TO THE STATUS OF COUNSEL FOR THE APPROPRIATE OFFICERS - CONFLICT OF INTEREST

On March 26, 1992, following the Examination in Chief of Constable J. Anderson, and prior to the commencement of her cross-examination by Davis Gates, counsel for the appropriate officer of RCMP "E" Division, Mr. K. Scarborough, counsel for Constable Anderson, asked the Commission to rule on the status of David Gates and Nancy Irving as counsel in the inquiry. His application rested upon an allegation of conflict of interest and he submitted that it was improper for either of them to have any standing in the hearing, and improper for them to represent the designated (sic) officers of the RCMP. He further submitted that David Gates and Nancy Irving were in a position such that they had irreconcilable divided loyalties, and that the RCMP were in a position where their counsel are in conflict.

In developing his submission, Mr. Scarborough pointed out that during the testimony of Constable J.O.M. Beaudoin evidence was given regarding the responsibility of the Department of Justice in the Northwest Territories to provide travel arrangements for witnesses required in the Territorial courts. Constable Beaudoin made specific reference to a conversation with an employee of the Department of Justice indicating that he anticipated that this employee would bring the matter to the attention of crown counsel who is also an employee of the Department of Justice. From this point he argues that there was then evidence before the Commission that the Department of Justice, through its employee, may have come into possession of information with respect to certain matters relevant to the inquiry by the Commission and that David Gates and Nancy Irving, who are also employees of the Department of Justice, may be seen to be privy to that information. Such being the case, David Gates and Nancy Irving cannot now appear for the appropriate officers of the RCMP since they may be in possession of information touching upon the involvement of a person who, however distantly connected, is a fellow employee.

In support of his submission, Mr. Scarborough referred to the decision of the Supreme Court of Canada in Martin v. Gray reported in 77 D.L.R. 4th Series at page 249. In that case, the Supreme Court of Canada set out the stringent test which is to be applied in determining issues of conflict of interest attributable to a solicitor-and-client relationship involving consideration as to whether or not confidential information relevant to the matter at hand has been received by a solicitor, and whether or not there is a risk that such information will be used to the client's prejudice. The court further held that in the application of the test it should be inferred that confidential information was imparted unless the solicitor satisfies the court that no relevant information was imparted and, that the court should automatically disqualify a solicitor who has relevant confidential information unless,

at least, the court is satisfied on the basis of clear and convincing evidence that all reasonable measures have been taken to ensure that no disclosure will occur.

Mr. Scarborough, relying on this decision, then argued that Mr. Gates and Ms. Irving, employees of the Department of Justice, had been retained by the RCMP and Mr. Gates was about to cross-examine Mr. Scarborough's client, Constable J. Anderson, concerning her involvement with the complainant, and that since allegations had been made touching upon the Department of Justice and the involvement of another of its employees, David Gates, may be in possession of information creating the conflict of interest and therefore lacks that independence and impartiality which Constable Anderson is entitled to expect when being cross-examined by counsel for her employer, the RCMP.

In this submission, Mr. Scarborough is joined by Mr. Jack Harris, counsel for Mr. C. B. Cull and Corporal P. Juby, and Mr. Richard Peach, counsel for Corporal W. J. Chisholm and Constable P. Tetso.

The Commission heard from Mr. N. Schultz, counsel for the Commission, who noted that the Commission is not a court of any kind and has no broad supervisory jurisdiction over matters of justice but has a clearly defined jurisdiction and powers limited by the provisions of the RCMP Act. He further noted that at the commencement of the hearing, the Commission determined, with the concurrence of all counsel, that the inquiry would be confined, closely, to the activities of the members of the RCMP as they related to the six specific complaints advanced by Kitty Nowdluk-Reynolds. In adopting that course for the inquiry the Commission would exclude hearing evidence with respect to matters involving others such as crown attorneys and the court since the jurisdiction of the Commission would be confined to matters of the conduct of the members of the RCMP. Hence, only evidence of the conduct of members of the RCMP in the performance of their duties is relevant in these proceedings and the "fairness" which justice requires will be achieved by confining the questioning by counsel to matters which are relevant. Accordingly whether or not any counsel has a conflict of interest does not discredit the inquiry so long as the questions posed by such counsel touch upon matters which are relevant to the issues before the Commission.

Mr. Schultz also submitted that the function of the Commission in this inquiry was to seek the truth with respect to allegations made concerning the conduct of members of the RCMP and that accordingly the process of the inquiry was inquisitorial and not adversarial. He submitted that this was a significant distinction between the process in which a court would be involved which demanded the application of stringent rules such as those adopted by the Supreme Court of Canada.

Mr. David Gates, on behalf of himself and Nancy Irving, responded to the application of Mr. Scarborough by submitting that the application arose from a misapprehension of the scope of the inquiry which the Commission was pursuing. He pointed out the Commission was created to inquire into the conduct of members of the RCMP and other persons who are employed or whose services are engaged by virtue of the RCMP Act. Such being the case, however tempting it might be to embark upon a broader inquiry into all manner of things raised by the complaints, it was not the purpose or the function of the hearing so to do.

He further pointed out that the inquiry was a fact-finding exercise and not one in which blame would be assigned to any person since the powers of the Commission following the conclusion of the inquiry were limited to making findings and recommendations which might emerge from those findings. Such being the case, the Commission has no authority to attribute blame or find fault with any individual or agency falling outside the scope of the RCMP Act. Accordingly, he argued, any division of loyalties which he or Ms. Irving might have between the Department of Justice and the appropriate officers of the RCMP does not arise.

In ruling upon the application, the Commission pointed out that there is nothing more important in the administration of justice in Canada than that those who appear as counsel do so with complete independence and without the slightest suggestion that there is a conflict of interest affecting the positions taken on behalf of their clients because of their relationship with others. The Commission accepted the decision of the Supreme Court of Canada and recognized the need for the stringency of the test that it stipulated in the case of Martin v. Gray. However, the Commission was of the view that the stringency of the test which would be applied in matters which come before a court may not be necessary in matters coming before the Commission under Part VII of the RCMP Act. The process followed by the Commission was inquisitorial and not adversarial. Hence, the need for such stringent tests on matters of conflict of interest does not arise. The Commission further pointed out that Part VII of the RCMP Act was designed to provide a public window into a process that previously existed in dealing with the complaints of citizens with respect to the conduct of members of the RCMP and in the inquiry which the Commission was empowered to undertake it was essential that all evidence touching upon the issues be reviewed in a thorough and fair hearing. In such circumstances, it would be inappropriate for the Commission to disqualify any counsel unless the Commission had the clearest indication that there was a conflict of interest and that the conflict was interfering with the presentation of evidence relevant to the issues which the inquiry was intended to explore.

Further, the Commission noted that, unlike a court, the Commission has its own counsel who is empowered to bring before the Commission, by subpoena if

necessary, any person who is able to give evidence that the Commission considers appropriate and essential to the inquiry and passes the test of relevancy. This feature distinguishes the Commission from the courts and enables it to avoid the consequences of any conflict of interest which it might identify.

The Commission denied the application by Mr. Scarborough to disqualify David Gates and Nancy Irving as counsel on behalf of the appropriate officers of the RCMP.